

## Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications

**Thirty-Second Session**  
**Geneva, November 24 to 26, 2014**

### REPORT

*adopted by the Standing Committee\**

### INTRODUCTION

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the Standing Committee” or “the SCT”) held its thirty-second session, in Geneva, from November 24 to 26, 2014.

2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Afghanistan, Argentina, Australia, Austria, Azerbaijan, Bahamas, Barbados, Belarus, Brazil, Cambodia, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, France, Georgia, Germany, Greece, Guatemala, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Lebanon, Libya, Lithuania, Madagascar, Malaysia, Mexico, Monaco, Morocco, Mozambique, Myanmar, Nepal, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, Uruguay, United Arab Emirates, United Kingdom, United States of America, Viet Nam, Zimbabwe (86). The European Union was represented in its capacity as a special member of the SCT.

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\* This Report was adopted at the thirty-third session of the SCT.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: Benelux Organization for Intellectual Property (BOIP), South Centre (SC) (2).
4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: Bureau of European Design Associations (BEDA), Centre for International Intellectual Property Studies (CEIPI), China Trademark Association (CTA), International Center for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Trademark Association (INTA), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), Knowledge Ecology International, Inc. (KEI), MARQUES (European Association of Trade Mark Owners) (10).
5. The list of participants is contained in Annex II of this document.
6. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions on the basis of all observations made.

#### **AGENDA ITEM 1: OPENING OF THE SESSION**

7. The Chair of the SCT opened the thirty-second session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), welcomed the participants and invited Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), to make opening remarks.
8. Mr. Marcus Höpferger (WIPO) acted as Secretary to the SCT.

#### **AGENDA ITEM 2: ADOPTION OF THE AGENDA**

9. The Delegation of Germany pointed out that Germany supported the convening of a diplomatic conference for the Design Law Treaty (DLT), as it would be in the interest of Member States. Nevertheless, to avoid further dilution, and since the texts were mature enough in order to convene a diplomatic conference, it proposed to remove them, from the agenda of the SCT. The Delegation said that it saw no merit in additional discussion and underlined that the DLT should not be dealt with anymore within the SCT. Finally, it expressed the view that if Member States have the political will, the General Assembly could and should decide to convene a diplomatic conference.
10. The Delegation of Kenya, on behalf of the African Group, and in reply to the suggestion made by the Delegation of Germany to remove the DLT from the agenda, recalled that during the session of the last General Assembly, the African Group had expressed concerns and reserved its rights to come back to the text. The Delegation said that the Group would have suggestions to make on this topic and, therefore, wishes to maintain this item in the Agenda. The Delegation believed that no one should be prevented from making any suggestion at any particular time. The Delegation added that this agenda was for a long time open to discussion, and no suggestion had been made to modify it. The Delegation was of the view that making a proposal, at this particular point in time, for removing an item from an agenda to which Member States have been prepared to engage and to contribute was unacceptable. Therefore, the Delegation firmly requested to uphold and to adopt the agenda without any correction.
11. The SCT adopted the draft Agenda (document SCT/32/1 Prov.3).

### **AGENDA ITEM 3: ACCREDITATION OF A NON-GOVERNMENTAL ORGANIZATION**

12. The SCT approved the representation of the Bureau of European Design Associations (BEDA) in sessions of the Committee.

### **AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-FIRST SESSION**

13. The SCT adopted the draft report of the thirty-first session (document SCT/31/10 Prov.).

### **AGENDA ITEM 5: INDUSTRIAL DESIGNS**

14. The Delegation of Kenya, on behalf of the African Group, recalled and reiterated its statement made at the previous General Assembly with regard to the proposed DLT, where it expressed concerns about the closed list of requirements under Article 3 of the proposed DLT, and its potential impact on the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) negotiations with which the African Group established a direct linkage. The Delegation indicated that the draft Articles clearly indicated a prohibition of Member States from requesting additional requirements other than those provided for in the draft Articles and regulations and it cited as recurrent example: Article 3(2), Article 4(5), Article 5(3), Article 10(6), Article 11(3), Article 12(5), Article 15(4), Article 19(6), Article 20(4) and Article 21(5) of the DLT. The Delegation underlined that the proposed text would have the potential to reduce the policy space and options available to countries, especially developing countries. In such context, the Delegation said that the African Group encouraged Member States to ask themselves whether it would be desirable or even necessary to tailor their design law and registration formalities to meet their public policy objectives. The Delegation noted that designs just like patents could offer strong protection, and lock out competition for a long time. In this regard, the Group underscored that it was critical that developing countries have the necessary policy space to meet their public policy objectives. To address some of these concerns, the African Group suggested that Contracting Parties may require under Article 3(1) a supplementary disclosure requirement during the application process. Such a requirement would be essential against misappropriation of traditional designs that may be based on genetic resources, and associated traditional knowledge, such as traditional cultural expressions. The Group proposed to provide the exact wording of their proposal during the agenda item. Finally, the Group reiterated its position to include an article on technical assistance to the DLT, to ensure targeted and adequate assistance for the implementation of the Treaty, and underlined that this issue should be resolved prior to any recommendation or decision on the convening of a diplomatic conference.

15. The Delegation of Paraguay, speaking on behalf of the Latin America and Caribbean Group (GRULAC) thanked the Secretariat for preparing the documents for consideration by the Committee, and reaffirmed its support for the discussion on the issues presented before the SCT. In relation to item 5 of the agenda referring to industrial designs, the Group regretted that despite efforts made by this Committee and by the previous General Assembly sessions, no agreement could be reached on convening a diplomatic conference for the adoption of a DLT. The Delegation thanked the Chair for his constructive role during the last General Assembly, in his attempt to reconcile once again, the positions on technical assistance. The Delegation said, that if negotiations were resumed on the DLT, GRULAC would maintain its constructive position on the nature of the provisions on technical assistance and capacity building, if they provide effective cooperation for developing and least developed countries (LDCs). The Delegation underscored that, without doubt, GRULAC countries would require this type of support, particularly during the implementation of the Treaty. Regarding the item on the agenda referring to the protection of country names, GRULAC wished to remind that this protection would give a

great opportunity especially for developing countries, to add value to the country names through the use of marks. The Delegation stated that at the twenty-ninth session of the Committee, the Secretariat had submitted a study (document SCT/29/5) showing that no consistent protection for country names existed. The GRULAC recalled that at its thirtieth session, the Committee had decided to continue its work on this point and had invited delegations to submit proposals in writing to the Secretariat. Consequently, the draft text for a possible joint recommendation in relation to the protection of country names against registration and use as trademarks (document SCT/31/4) was submitted to the Committee. The proposal could serve to guide Member States in the process of examination and registration of trademarks, to promote consistent and exhaustive protection of country names. The Delegation recalled that in the previous session of the SCT, it had been agreed to consider during the next session of the SCT, the revised proposal based on comments made by Member States. On this basis a revised version of the draft joint recommendation (document SCT/32/2) was submitted to the Committee. In this connection, GRULAC reaffirmed its support for the discussions and the continuation of work on the protection of country names.

16. The Delegation of Bangladesh, on behalf of the Asia-Pacific Group, thanked the Secretariat for its support and assistance in preparation for this session. The Group recognized that intellectual property had gained critical significance in the global interconnected world. Furthermore, the Group said that the intellectual property system should be cognizant and responsive to the diversity in needs and to development of all Member States. The Asia-Pacific Group also believed that a fair intellectual property system, which balances the interests of the right holders and the protection and promotion of the public welfare was essential for the progress of all Member States. The Delegation indicated that a balanced outcome of this meeting was vital to ensure benefits for all members. The Group attached great importance to ensure the provision of technical assistance in the proposed DLT through the inclusion of an article in the main text. The Asia-Pacific Group also believed that the implementation of the proposed treaty would entail, in all likelihood, some modifications of the national laws and practices. Consequently, setting up new infrastructures to deal with more applications, building national capacity to manage increased numbers of demands and developing legal skills and training would require substantial technical assistance. In addition, the Group held that, in order to be realistically achievable, the treaty, while imposing obligations, should provide provisions for building capacity, to meet those obligations. The Delegation said that the Group hoped this matter could be decided to the satisfaction of all Member States in this session in a manner which enables them to meet their responsibilities. The Delegation said that the members of the Asia-Pacific Group would engage actively in discussions on the issues of protection of country names and geographical indications with a view to building consensus and achieving an acceptable work program. In conclusion, the Delegation said that members of the Asia-Pacific Group would contribute on specific issues on the agenda in their national capacity. The Delegation expressed the commitment of the Group to participate in a constructive debate and a fruitful result in this SCT session.

17. The Delegation of Belarus, on behalf of the countries of the group of Caucasian, Central Asian and Eastern European Countries (CACEEC), expressed its attachment to the work of the Committee, since its outcome was of great practical use for Member States of WIPO. The Delegation stated that the agenda of this SCT was extensive, its items were relevant, and that some proposals were presented to the Committee for future work. The Delegation expressed its concerns with respect to the draft DLT, and believed that the time was now ripe to go to a different level, the diplomatic conference. The Delegation stated that the Committee could overcome the last areas of disagreement on the substantive issues of the Treaty, and further hoped that the interested parties would show greater political will to resolve this question. With respect to the other items of the agenda, the Delegation expressed its satisfaction with the progress achieved, and thanked the Secretariat for the preparation of the documents for this session. Finally, the Group expressed its hope that the Committee makes progress in order to reach new success, and was ready to continue working actively within the Committee.

18. The Delegation of the European Union, on behalf of its member states, expressed support for taking the work on the draft design law formalities treaty to the next step, the convening of a diplomatic conference. Therefore, the Delegation agreed on a recommendation to convene a diplomatic conference. The Delegation wished to thank the WIPO Secretariat for the preparatory work of the meeting. The Delegation of the European Union and its member states emphasized the great importance and added value of harmonizing and simplifying design registration formalities for all users, in particular for small and medium-sized enterprises (SMEs), the driving force for economic growth in developed and developing countries alike. The Delegation underscored, that the texts were appropriate to establish a flexible and dynamic framework, able to produce design law, capable of keeping up with future technological socio-economic and cultural changes. The Delegation believed that the draft Articles and Regulations were technically mature, representing a significant step towards approximating and simplifying industrial design formalities and procedures. The Delegation said that the Committee needed to preserve its achievements, and did not need to pursue the discussion on the draft provisions of the DLT. Therefore, the Delegation of the European Union and its member states suggested focusing the efforts of the SCT on the decision to recommend the convening of a diplomatic conference.

19. The Delegation of the Czech Republic, on behalf of the Group of Central European and Baltic States (CEBS Group) expressed its appreciation to the Chair for his leadership which enabled the Committee to discuss and to make significant progress paving the ground towards meaningful results, in particular the successful completion of the work on the industrial design law and practice issues. The Delegation also thanked the Secretariat for the preparation of documents for this session. The CEBS Group recalled its great disappointment that the General Assembly was not able to decide on convening a diplomatic conference for the adoption of a DLT in 2015. The Delegation said that the CEBS Group believed that both texts bear sufficient maturity for convening a diplomatic conference for the adoption of a new treaty in the field of industrial design. Furthermore, the Delegation was convinced that this has been the case for some time. The Delegation said that the CEBS Group considered that the issue of the DLT was its priority in the SCT work. The Delegation expressed the commitment of the Group to address other agenda items, and to actively participate in the discussions on documents and proposals contained under specific agenda items. Expressing the CEBS Group commitment, the Delegation hoped to reach consensus, in achieving an acceptable work program on several issues, especially with regard to the work on geographical indications and domain names.

20. The Delegation of Japan, on behalf of Group B, thanked the Chair for his leadership in the work of the Committee, especially at this critical moment, and thanked the Secretariat for its work in preparing the session. With respect to the text of the DLT, the Delegation said that Group B believed that the draft Articles and Regulations including provisions relating to technical assistance had reached the level of maturity whereby the only further progress would be to decide the convening of a diplomatic conference. The Delegation expressed its regret that such a decision had not been taken despite the intense discussions during four General Assemblies, and only due to one non-substantive issue. The Delegation said that the Committee could not gather substantive issues, which could bring benefit to all users of a respective level of development, with other matters of diplomacy that are not in the objective of the Treaty. Taking into account the maturity of the substantive texts, the Delegation said that the Group saw no merit to continue further discussion on the draft provisions of the DLT. The Delegation underscored that the decision that this Committee still should take, was the recommendation to convene a diplomatic conference based on proposed texts of the DLT. The Delegation stated that the petition to pursue the discussion of the proposed DLT at the SCT and at the General Assembly risked decreasing the quality and maturity of the texts, which had been achieved by Member States in a compromise spirit pending the holding of a prompt diplomatic conference. The Delegation emphasized that the substantive discussion on texts should be avoided during this session of the SCT, and said that the Committee should focus on drafting

the recommendation to General Assembly to convene a diplomatic conference. The Delegation said that it was generally accepted that WIPO should provide technical assistance and capacity building in the implementing of the proposed treaty. The Delegation emphasized that Group B recognized the importance of such activities to assure effective implementation of the treaty. The Delegation declared that Group B had been actively engaged in the exercise to find a neutral satisfactory and workable solution in the diplomacy spirit. Group B further considered that the whole negotiation should not be held hostage by making a non-substantive provision a strict prerequisite for further advancement. The Delegation underscored that in this spirit, Group B had suggested wording to be included in a General Assembly decision or in a statement at the General Assembly in September. However, the Delegation considered unfortunate that this wording was simply rejected without having been further developed from other perspectives. The Group believed and underlined that another point could be found through open and flexible discussions and hoped that all members would be engaged in those exercises. The Group expressed its serious concerns for the future of the DLT and consequently for the users of the global intellectual property system and services which constitute the basis of income of this organization. The delays caused by that issue would lead to possible sacrifices and be injurious to potential benefits in innovation and development. The Delegation concluded that this may lead to mistrust towards WIPO and those who support the system and the organization, and could be critical and damaging not only for the organization, but also for its Member States. Finally, the Delegation emphasized that such consequences would not be favorable to any Member States, which are responsible for avoiding such situations. The Delegation of Japan, on behalf of the Group B, expressed its full support to the Chair and its commitment to work in a constructive spirit during this SCT session.

21. The Delegation of China thanked the Secretariat for the preparatory work of the meeting. The Delegation supported the statements made on industrial designs and hoped that the work of the SCT would be conducive to conclude the DLT as soon as possible. The Delegation expressed the wish that the provisions of the Treaty were flexible to take into account the concerns of various countries. The Delegation added that the Committee should take into account that some delegations may wish to make some reservations on certain articles, and it should cover the issue of technical assistance activities. The Delegation stated that it was in favor of convening a diplomatic conference, in view to come up with a Treaty that would be accepted by as many Member States as possible to ensure that it could be fully implemented. With regard to domain names and geographical indications, the Delegation expressed its commitment to participate in further discussions. Finally, the Delegation hoped that the work of the Committee would achieve to successful outcome.

22. The Delegation of Mexico, endorsed the statements made by the Delegation of Paraguay, speaking on behalf of GRULAC and thanked the Chair for its leadership which would enable the Committee to make progress during this thirty-second session of the SCT. The Delegation also thanked the Secretariat for the preparation of documents for this session. The Delegation welcomed the venue of this meeting and the efficient use of organization resources in its preparation, especially to have reduced it to a three-day meeting, which was a very good example of enhanced efficiency and effectiveness which should be reflected also in other meetings of the Organization. The Delegation expressed the view that this would not only help the Organization to save budget resources, but would also enable experts on industrial property attending these meetings to make a best use possible of their time. Finally, the Delegation would participate actively in the discussions on all the issues on the agenda, and encouraged all delegations to approach the discussions in a spirit of flexibility, in order to achieve with substantive results in this session.

23. The Delegation of the Republic of Korea thanked the Chair for its leadership and commitment which would bring this session to a successful conclusion. The Delegation also thanked the Secretariat for its work in preparing this session. The Delegation supported the statements made by the Delegation of Bangladesh, on behalf of the Asia-Pacific Group. The

Delegation said that it had followed the discussions on the DLT which had been initiated within the SCT in 2005, and wished to thank the Committee and the Member States for their commitment to carry out these discussions. Regarding the drafting on provisions on technical assistance to include in the DLT, the Delegation recognized that different approaches exist between Member States, and believed that the ultimate aims of the Member States were the same. Therefore, the Delegation hoped that a compromise on the detail of the proposed DLT could be reached as a result of the ongoing discussions. The Delegation thought that other substantial matters would be discussed during the diplomatic conference at a later stage. In addition, the Delegation expressed appreciation to the Delegation of Jamaica for its proposed Joint Recommendation on country names, which would help the protection of country names. The Delegation believed that this recommendation should be implemented in order to address and satisfy the concerns of all Member States. Therefore, the Delegation stated that substantive discussion on this item were necessary in order to reach a consensus. Regarding the discussions on geographical indications, the Delegation recalled that at the previous session of the SCT, the delegations could not reach an agreement on this issue, and the controversy had continued at the meeting on the development of the Lisbon System. Following the proposal made by the Delegation of the United States of America, the Delegation believed that the SCT, which deals with geographical indications, was the right forum to discuss geographical indications related matters. In addition, the Delegation expressed the view that various approaches to the equal protection of geographical indications and their economic impact existed between Member States. The Delegation believed that more inclusive discussions would be needed to establish a new international registration system for geographical indications. Finally, the Delegation hoped that another wise solution on this matter could be reached at this session of the SCT, and thanked the Chair for his leadership which would enable the Committee to conclude this session with success.

24. The Delegation of Iran (Islamic Republic of), thanked the Chair for its leadership which enabled the Committee to achieve successful outcomes during this session. The Delegation also thanked the Secretariat for its work in preparing this session. The Delegation associated itself with the statement made by the Delegation of Bangladesh, on behalf of the Asia-Pacific Group. The Delegation expressed its satisfaction with the progress made in the negotiations on the draft DLT text. The Delegation underscored that it would be important to establish a balance between costs and benefits. As regards the study prepared by the Secretariat on the potential impact of the work of the SCT on industrial design law and practice, it had recognized the requirement in administrative assistance, legal skills, training, and in infrastructure investment for developing countries. The Delegation expressed the view that in line with the objective of the Organization in other areas, the work of the SCT should be in conformity with development. The Delegation recalled that, according to Cluster B of the WIPO Development Agenda Recommendations, technical assistance and capacity building should be part of the DLT by including a legally binding provision in view of paving the way for developing countries and LDCs to their easier adhesion to such new treaty, and for helping those countries in using effectively the formalities of the DLT. The Delegation supported the proposal by the Delegation of Kenya, on behalf of the African Group, on the inclusion of a disclosure requirement in Article 3 of the future DLT. Regarding the protection of country names, the Delegation expressed the importance it attached to the work of the Committee on this topic. Consequently, the Delegation wished that the work of the Committee could advance in the proposal of developing a joint recommendation in relation to the protection of country names, which had been submitted firstly to the Secretariat by the Delegation of Jamaica during the twenty-eight session of the SCT.

## AGENDA ITEM 5: INDUSTRIAL DESIGNS

### *Industrial Design Law and Practice – Draft Articles and Draft Regulations*

25. The working documents under this item were SCT/31/2 Rev. and SCT/31/3 Rev.

26. The Delegation of Kenya, speaking on behalf of the African Group, expressed the view that the approach followed in Articles 3(2), 4(5), 5(3), 10(6), 11(3), 12(5), 15(4), 19(6), 21(5) and 24 was neither desirable nor necessary. In addition, the African Group proposed that a new item be included in Article 3(1)(a), which would read as follows: “Where the subject matter claimed in the industrial design application includes utilization of, or is directly based on genetic resources, their derivatives and the associated traditional knowledge, traditional knowledge, or one or more traditional cultural expressions, each party shall require applicants to: (1) disclose the country of origin, or if unknown, source of the genetic resources or their derivatives, traditional knowledge, or one or more traditional cultural expressions; (2) provide relevant information, as required by the national law of the Intellectual Property Office, regarding compliance with access and benefit sharing requirements, including prior informed consent; (3) if the source and or country of origin is not known, make a declaration to that effect”.

27. The Delegation of the European Union, speaking on behalf of the European Union and its member states, expressed the view that the draft Articles and draft Regulations were technically mature. Indicating that it wished to keep the achievements and level of harmonization reached so far, the Delegation said that it did not support further discussions on the texts. Considering that the SCT should focus on the decision to convene a diplomatic conference, the Delegation stated that it remained open to proposals that could help to reach this objective.

28. The Delegation of Japan, speaking on behalf of Group B, indicated that a great deal of substantive progress had been made and that further substantive progress could only be made at the diplomatic conference. Insofar as, in the Delegation’s view, the achievements realized so far should be preserved, the SCT, at this session, should avoid substantive discussions on the texts and should focus on drafting a recommendation to the General Assembly to convene a diplomatic conference. The Delegation expressed its concern about last minute proposals on new concepts which, in its opinion, would undermine the achievements made so far. Considering that informal consultations would be the best format to discuss a recommendation to the General Assembly to convene a diplomatic conference, the Delegation proposed the following language: “The WIPO General Assembly (a) decided to convene a diplomatic conference for the adoption of a DLT in 2015 at a date and venue to be decided by the preparatory committee, on the understanding that the diplomatic conference could consider accordingly the inclusion of an article on technical assistance; (b) decided that one session of the preparatory committee would be held back to back with the thirty-third session of the SCT”.

29. The Delegation of Kenya, indicating that nothing was agreed until everything was agreed, said that the whole current text was to be considered as being between brackets. The African Group made a proposal to include a disclosure requirement under Article 3 given that nothing prohibited suggestions from any Member State at any stage, including during the diplomatic conference. Recalling that a proposal was reflected in a footnote, where made by one Delegation, and in the main body of the text, where supported by a number of SCT members, the Delegation of Kenya stated that the African Group, which included 54 countries, expected its proposal to be reflected in the main body of the text under Article 3. Reiterating the legitimacy of its request, the Delegation pointed out that a closed list of requirements had the effect of reducing the policy space of most developing countries to craft their design law and design formalities. Taking into account the discussions of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), the

Delegation expressed the view that there was a direct link with that Committee, which should be reflected. Finally, the Delegation declared that it was not ready to discuss any recommendation to the General Assembly until all its issues had been addressed.

30. The Delegation of the Czech Republic, speaking on behalf of the CEBS Group, said that both texts were sufficiently mature to convene a diplomatic conference for the adoption of a new treaty. The Delegation pointed out that the CEBS Group continued to pay great attention to the simplification and harmonization of industrial design formalities and procedures. In its view, the DLT would facilitate the obtaining of industrial design protection for creators, applicants, and industrial design holders from all countries around the globe and, as a user-friendly and flexible instrument, would be to the benefit of all users. Reiterating the CEBS Group's flexibility for the inclusion, in the text of the treaty, of an article on technical assistance and capacity building for the implementation of the future DLT, the Delegation stated that this matter could be resolved at a diplomatic conference. Fearing that opening discussions on the clean segments of the texts and that further delay on this issue would be detrimental to the agreed parts of the texts, the CEBS Group intended, at this session of the SCT, to focus its efforts on a specific recommendation of the SCT to the General Assembly to convene a diplomatic conference.

31. The Delegation of Nigeria aligned itself with the statement made by the Delegation of Kenya on behalf of the African Group. Considering that it was premature to work on an agreed language for a decision to convene a diplomatic conference while substantial issues were still pending, the Delegation recalled the African Group's proposal to include a disclosure requirement which would detail sources and origins of any industrial design which may have used genetic resources, traditional knowledge (TK) or traditional cultural expressions (TCEs). The Delegation expressed the hope that the Committee would be willing to further discuss this subject so as to reach a credible arrangement.

32. The Delegation of Iran (Islamic Republic of), considering that the draft DLT had not been finalized yet and that every delegation had the right to make new proposals related to articles, expressed its support for the proposal made by the African Group. The Delegation said that, in its view, the proposal was not new since a disclosure requirement had been proposed by developing countries in relation to the article on technical assistance.

33. The Republic of Korea expressed its support for the suggestions made by the Delegations of the Czech Republic on behalf of the CEBS Group, the European Union, and Japan on behalf of Group B. The Delegation considered that the SCT should, at this stage, focus on the convening of a diplomatic conference, and suggested therefore concentrating on this matter. The Delegation further indicated that all substantive issues included in the texts could be discussed at the diplomatic conference.

34. The Delegation of Kenya, pointing out that there would be another session of the SCT before the next General Assembly, expressed the view that the SCT would not use wisely its time if it focused on a recommendation to convene a diplomatic conference. In its view, since the next General Assembly would take place in 10 months, there was no hurry to converse about such recommendation where substantive issues were still to be discussed. The Delegation reiterated the African Group's expectation to see its proposal reflected in the text. The Delegation added that Article 3(2), which stated that no indication or element, other than those referred to in paragraph (1) and in Article 10 may be required in respect of the application, constituted a closed list of requirements. Recalling that it was working on a legal instrument on traditional knowledge, genetic resources and traditional cultural expressions, which contained a disclosure requirement, the Delegation said that the adoption of this instrument at international level would mean that no Member State would be required to provide that information even if it became necessary. In that sense, the Delegation considered that the best way would have been to finish the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), consider its outcome and adopt the

regulations. However, because of a stalemate at the IGC, the Delegation did not want to close the door to any requirement for Member States. For developing countries, a disclosure requirement would be essential, in particular with respect to traditional knowledge and traditional cultural expressions. For this reason, an open list and, if not, a disclosure requirement as part of the requirements, was needed. Otherwise, there was a risk that the Delegation of Kenya would disagree with the work carried out in other places, especially at the IGC. The Delegation said that good faith of the engagement should be reflected by including this safeguard in international law.

35. The Delegation of the Czech Republic, observing that the proposal made by the African Group was new and unexpected, said that it needed to consult with its capital and within the CEBS Group on the substance of that proposal and the strategy behind it.

36. The Delegation of South Africa expressed its support for the proposal made by the African Group. As regards the proposal made by Group B, the Delegation observed that it was similar to the one already made at the last General Assembly, which had not been agreed upon. Therefore, the Delegation wondered whether the SCT should deliberate on such language.

37. The Delegation of India, indicating that discussions on the draft Articles and Regulations were still going on, said that it saw merit in discussing the proposal made by the African Group, but that it needed to consult with its capital. Noting that the proposal made by Group B did not concern the draft Articles and Regulations, the Delegation wondered whether the SCT should discuss a decision paragraph for a recommendation to the General Assembly.

38. The Delegation of Japan stated that Group B had engaged in the negotiation on the DLT with a constructive spirit and in good faith, for the benefit of all users, irrespective of the level of development, so as to achieve an objective of the Organization. It followed from sessions of the General Assembly and the SCT that all groups were in favor of, and ready for, a diplomatic conference to adopt the DLT. However, one issue, technical assistance, remained. Based on that shared understanding, the Delegation recalled that Group B had been engaged in negotiations concerning technical assistance with flexibility so as to find a mutual satisfactory solution, addressing the concerns of all groups. The current proposal by Group B, as a basis for a further text-based exercise, was one of the examples of such flexibility. In this context, the Delegation regretted that a new substantive proposal by the African Group had emerged in the last minutes of the negotiation and in a manner that deviated from the shared and longstanding understanding that only the remaining issue on technical assistance had to be solved before moving to a diplomatic conference. As this last minute surprise had drastically changed the negotiation environment, the Delegation of Japan announced that Group B had to reconsider its flexibility on technical assistance, including the concept it had presented at this session of the SCT. Taking into account the context of the proposal by the African Group, Group B expressed concerns about its nature. In its opinion, it was self-explanatory and obvious that the proposal on a disclosure requirement had nothing to do with the objective of simplifying design application formalities. The proposal dealt with a substantive requirement which should be discussed in other contexts. Since respecting this objective was an essential element of good faith negotiations and diplomacy, the Delegation regretted that the negotiations had gone backward and that the environment enabling negotiations to advance had been deprived by surprise. The Delegation was of the view that, although a proposal supported by more than one Member State should be included in the articles between brackets, any rule should apply in faithfulness. Bringing off-track surprise in the last minutes of the negotiations was not a normal practice within WIPO. Since, for Group B, nothing could justify further delay of the benefits in innovation and development, the Delegation appealed to all SCT Members to go back to the track so as to fulfill their responsibilities.

39. The Delegation of Germany declared that it did not support the proposal of the African Group to include a disclosure requirement under Article 3 of the draft DLT, since this would lead to the implementation of an alien provision. In its view, the proposed disclosure requirement had nothing to do with the best practices pertaining to industrial design law and practice in the Member States and was therefore unacceptable. The Delegation considered that requesting a substantive amendment of Article 3 with an alien content at such a late stage put at risk the entire DLT. Reiterating its support for the DLT, which was for the benefit of all Member States, the Delegation concluded that it was not in a position to accept any manoeuvre for the sake of a diplomatic conference.

40. The Delegation of the European Union, on behalf of the European Union and its member states, declared that it did not support the proposal by the African Group for reasons related to both its form and substance. With regard to the form, the Delegation highlighted the conclusion of the May 2014 WIPO General Assembly, which had encouraged delegations to hold informal consultations, prior to the 54<sup>th</sup> series of meetings of the WIPO Assemblies, with a view to resolving pending issues. At that time, the African Group had stated that the question of technical assistance had to be resolved in order to reach agreement on convening a diplomatic conference. No reference had been made to the new issue now raised by the African Group. The Delegation of the European Union observed that the records of the SCT and the General Assembly made it clear that pending issues dealt exclusively with the question of the provision on technical assistance. The Delegation strongly believed that the broad flexibility it had demonstrated to address the concerns voiced by developing countries had met their legitimate expectations. So far, the discussions on the DLT had been governed by a well-established working method aimed at identifying problematic issues that required further discussions and, provisionally, closing off parts of the text on which consensus had been reached. The Delegation of the European Union pointed out that the maturity of the texts had not been challenged at the previous session of the SCT, which clearly demonstrated that the discussions were exhausted, except in regard to technical assistance. However, the Delegation noted that, out of the blue, the SCT was currently contemplating amendments not related to industrial design procedures. In its opinion, the timing of the new proposal by the African Group proved that the negotiations were no longer conducted in good faith. With regard to the substance of the proposal, the Delegation of the European Union was of the view that the proposal had nothing to do with design formalities, the objectives of the DLT and design law in general, but aimed at politicizing a process which had reached a successful outcome at a technical level. Recalling that the objective of the Design Law Treaty was the simplification and harmonization of current design formalities and procedures, the Delegation underlined the fact that it would provide great advantage to all, including to SMEs in developing countries. In its view, the motivation appeared to be purely political since the proposed amendment was intended to establish an artificial link between the work on the DLT and discussions taking place elsewhere. Finally, referring to its general statement, the Delegation recalled that the provisions of the DLT were technically mature and represented a significant step forward towards approximating and simplifying industrial design formalities and procedures. Taking into account the necessity to preserve the achievements and the level of harmonization reached, the Delegation did not see the need to discuss the substance of the draft Articles or the proposed new amendments. Therefore, the Delegation urged the African Group to withdraw its proposal, to reconsider its position and to engage in a constructive dialogue.

41. The Delegation of the Czech Republic, speaking on behalf of the CEBS Group, reminded the SCT of its previous statements at this session, showing its willingness to continue to discuss only open issues of the texts as well as a recommendation by the SCT for the convening a diplomatic conference. Only such a path would bring the SCT closer to the convening of a diplomatic conference. Indicating that all delegations, including the African Group as a whole, had pronounced their willingness to convene a diplomatic conference at several past sessions of the SCT and during several past series of meetings of the General Assembly, the Delegation

of the Czech Republic said that it was clear to all that only one open issue had to be tackled so as to convene a diplomatic conference. The proposal made by the African Group had, however, significantly changed the situation. For the Delegation of the Czech Republic, the proposal was not only completely new and outside the scope of the DLT and the spirit of the SCT efforts to simplify the registration procedures, but also highly misbalanced in respect to the overall sense of the DLT. Under these circumstances, the Delegation was of the opinion that, rather than bringing the SCT closer to a successful conclusion, the proposal had brought it further away. The CEBS Group could therefore only draw the conclusion that this proposal was not made in good faith and created further artificial linkages. The Delegation declared that these actions would have serious consequences on the CEBS Group's flexibility shown so far with regard to the open issue. Looking for steps forward would still be possible, but would become much harder. Finally, the Delegation announced the CEBS Group's availability to delegations and groups which saw merit in the substance of a DLT and were ready to reciprocate bridge-building efforts made by the CEBS Group in this area.

42. The Delegation of the United States of America said that it was important to take a step back and consider the purpose and nature of the DLT, in view of the current issues. In its opinion, the SCT members had continually agreed, during the initiation, drafting and review of this instrument over the last decade, that the DLT was a formalities treaty, aiming at streamlining and communizing requirements for design applicants seeking for design rights. Accordingly, it appeared to be universally agreed that the DLT was an analogous treaty in designs as the Patent Law Treaty (PLT) with respect to the handling of patent formalities and the Singapore Treaty on the Law of Trademarks (STLT) with respect to the handling of trademark formalities. Pointing out that the shared belief in this construct was reinforced by the fact that the SCT had repeatedly looked to the provisions of the PLT and STLT to guide its work, the Delegation highlighted the fact that the text of the DLT contained articles and regulations directly imported from the PLT and/or the STLT, with some minimalistic modifications to better fit with industrial designs particularities. In addition, the Delegation indicated that, long ago, WIPO had agreed that the concept raised in the proposal by the African Group should not be placed in a formalities treaty. In particular, the issue of a disclosure requirement with respect to genetic resources had already been debated at great length in the PLT framework and WIPO members had then agreed that its placement in a formalities treaty would not be appropriate. The Delegation therefore considered that the proposal of the African Group took the SCT backwards over a decade in time and asked WIPO members to erase not only over a decade of work, but also the agreement on the proper forum to discuss this issue. Expressing its concerns about the proposal of the African Group, including its lack of association with industrial designs, the Delegation reported that, in its experience in examining industrial design applications for many decades, it had not seen any tie between genetic resources and industrial designs. Genetic resources had no role in the area of industrial designs, which dealt with the ornamental or aesthetic aspects of products. Aligning itself with delegations having expressed concerns about the introduction of such a robust topic into a complete, static and fully developed draft instrument, the Delegation said that, in its opinion, the addition of this new topic to the text, for the first time at this stage, did not seem to be aimed at resulting in a positive outcome of the DLT. Since this new topic had no logical ties to industrial designs and was introduced at a point where the text was substantially static, the Delegation concluded that it could not support the proposal of the African Group.

43. The Delegation of Kenya, stating that it negotiated in a progressive manner, observed that, while delegations had put forward their interests and perspectives, nothing indicated that one group acted in bad faith. There were discussions and concerns raised in relation to particular issues, even where these issues were considered as outside of the mandate of the work of the SCT or subject to other committees. Since a proposal made by one delegation and supported by another delegation should be reflected in the text, the Delegation said that it expected to see the proposal by the African Group, which was supported by the Delegation of Iran (Islamic Republic of), reflected in the text. Observing that nothing was agreed until

everything was agreed, the Delegation said that delegations were free to make proposals. Recalling that, at the last session of the SCT, it had reserved its right to come back to the proposals, the Delegation stated that there was no bad faith since it had raised this issue on a number of occasions. Therefore, the Delegation indicated that the issues raised by the African Group should be addressed and considered on an equal footing.

44. The Delegation of Algeria said that it felt the need to react to the surprising statements made by some delegations, accusing the African Group of trying to politicize the process, doing manoeuvre, acting in bad faith and not being mature in diplomacy. Expressing its full support for the statement made by the Delegation of Kenya on behalf of the African Group, the Delegation of Algeria said that the proposal by the African Group had the merit of expressing the entire perspective of the treaty. The fact that some delegations did not see the need for a disclosure requirement concerning TK and TCEs did not mean that the proposal was a manoeuvre of politicizing the process. The Delegation said that, while there was no problem with delegations expressing disagreement and rejecting the proposal by the African Group, it was not fair to consider that the African Group was bringing a political issue. Since, in its view, a disclosure requirement constituted a formality by which an applicant disclosed what he/she claimed, the Delegation did not understand why such requirement could not fit into a formalities treaty. The Delegation indicated that the proposal was not new, last minute or coming out of the blue, but was built on a proposal introduced by the African Group at the twenty-eighth session of the SCT related to new elements, such as fee reduction and exchange of information for traditional designs. At that time, the African Group had wanted the treaty to provide some kind of information for traditional designs. The Delegation further stated that, for the African Group, the treaty was not about harmonizing design formalities, but was also about helping the African countries to benefit from it. If the treaty provided a mechanism for the African Group to ensure that traditional designs were not misused, it would then make a difference and would bring a new added value. Bearing in mind that negotiations were not a static process and evolved throughout the years, the Delegation of Algeria said that each delegation was free to make new proposals without being questioned about its good or bad faith. In conclusion, expressing its readiness to discuss, take on board comments and understand the concerns, the Delegation urged the SCT Members to consider the proposal by the African Group.

45. The Delegation of Iran (Islamic Republic of), endorsing the statement by the Delegation of Kenya, underlined the fact that nothing was agreed until everything was agreed. In its opinion, all pending issues should be resolved before taking any decision about a diplomatic conference. The Delegation concurred with the Delegation of Algeria in believing that the proposal by the African Group was not new since these elements had been presented by some developing countries in respect to the article on technical assistance. The Delegation, reiterating its full support for the proposal by the African Group, said that its inclusion in the text would benefit developing countries and prevent misuse.

46. The Delegation of India expressed its support for the proposal by the African Group, which should be included in the draft text of the DLT for consideration by the SCT at a future session. The Delegation said that proposals by Member States should be given consideration by the SCT and should not be rejected without considering their merits. Echoing the statement made by the Delegation of Iran (Islamic Republic of), the Delegation pointed out that the pending issues did not concern only technical assistance, but also several articles. Considering that it was unfortunate not to reflect in the text the position of a single delegation, the Delegation said that the proposal by the African Group, supported by several Member States, should be duly incorporated in the text. Finally, the Delegation stated that the proposal by Group B was not to be considered until the SCT would have worked on the draft Articles and draft Regulations.

47. The Delegation of the European Union said that it took note regretfully of the request of the African Group for the new addition to be made in the draft text. Requesting that its position be clearly reflected in a footnote to the amendments by the African Group, the Delegation

pointed out that the European Union and its member states would need time to evaluate the full implications of the proposed amendments, so as to determine whether they were still in a position to support the convening of a diplomatic conference under these changed circumstances. The Delegation also said that the European Union and its member states should determine the consequences the proposal would have for the flexibility they had shown in the past in relation to technical assistance, as the basic objective of simplification and harmonization would no longer be met.

48. The Delegation of Côte d'Ivoire, expressing its support for the proposal made by the African Group, said that it was regretful that some delegations claimed a right to make relevant proposals and considered that other delegations, in particular the African Group, made unreasonable proposals.

49. The Delegation of Spain, underscoring the significance of this item, requested that, in addition to the opposition expressed by the Delegation of the European Union and its member states to the proposal by the African Group, its own lack of support be reflected in the footnote. The Delegation added that, in its view, the proposal deviated from the mandate of the General Assembly and had completely changed the panorama.

50. The Delegation of Japan requested that the disagreement of Group B and of Japan be reflected in the footnote.

51. The Delegation of the Czech Republic, recalling that the CEBS Group disagreed with the proposal by the African Group, requested that its position be reflected in the footnote. As to the observation of the Chair about the unchanged situation regarding the convening of a diplomatic conference, the Delegation said that the CEBS Group needed to evaluate whether the situation remained unchanged or whether significant changes had occurred.

52. The Delegation of the United Kingdom, expressing its disagreement with the proposal by the African Group, requested to be explicitly mentioned in the footnote.

53. The Delegation of Algeria expressed its disagreement with a footnote listing all the delegations not in favor of a proposal.

54. The Delegation of Germany, stating that it could not accept the proposal by the African Group, requested that its position be reflected in the footnote.

55. The Delegation of Kenya, aligning itself with the statement made by the Delegation of Algeria, considered that the proposal by the African Group should be placed in the text in brackets. In its view, the footnote should merely list the disagreeing delegations, without reproducing their full statements, which could be included in the summary by the Chair.

56. The Delegation of the European Union requested that the name of the 28 European Union member states be inserted in the footnote. In its view, the footnote should show that the concerns related to both the substance and the form of the proposal of the African Group and provide for a short rationale.

57. The Delegation of the United States of America requested that its position be reflected in the footnote.

58. The Delegations of Norway, the Republic of Korea and Switzerland requested to be mentioned in the footnote as delegations not supporting the proposal of the African Group.

59. The Delegation of Algeria, considering that the footnote should also indicate that the proposal was made by the African Group, wondered whether the 54 countries of the African Group should be named for the sake of balance. The Delegation said that it wanted to be sure that the footnote would not cover the substance, but merely list who made the proposal and who disagreed.

60. The Delegation of the European Union was of the view that the footnote in question should be differentiated from the other footnotes currently appearing in the text, taking into account the last minute addition. Consenting to a footnote not duplicating its whole statements, the Delegation of the European Union requested, however, that a brief rationale for objecting to the proposal of the African Group be provided.

61. The Delegation of Kenya, observing that all proposals made by WIPO Member States were important, regardless of their timing, said that the rules should not change because the African Group had made a proposal, emanating from 54 African countries and supported by the Delegations of India and Iran (Islamic Republic of).

62. The Delegation of Hungary said that, while it concurred with the African Group in stating that nothing was agreed until the diplomatic conference agreed on the final content, the SCT working method, which constituted a common understanding among the SCT members, consisted of focusing only on the issues in brackets or commented in a footnote.

63. The Delegation of Indonesia, pointing out that the SCT should focus on the problems, questioned the benefit of listing the names of WIPO Member States in a footnote, as opposed to further discussing this issue in an informal meeting.

64. The Delegation of Iran (Islamic Republic of) said that statements and arguments against, or in favor of, proposals should be shown in the report of the session or in the summary by the Chair, and not in a footnote.

65. The Delegation of India said that the fact that it had shown flexibility with certain articles did not mean that it did not have a problem with other articles. The Delegation did not consider that only those issues shown in brackets were pending. The Delegation noted that it had a concern in relation to Article 6 regarding the grace period for filing in case of disclosure, which had not been reflected in the report of the 31<sup>st</sup> session. Therefore, the Delegation reserved its right to re-state its position or reservation concerning Article 6 in a footnote.

66. The Chair suggested drafting an explanatory note, instead of a footnote.

67. The Delegation of the European Union said that it was flexible on the choice of an explanatory note appearing beneath the articles or a footnote, provided that the record of oppositions was reflected in the body of the text. As regards the text of the footnote reflecting the opposition to the proposal by the African Group, the Delegation suggested the following language: "The following Delegations rejected the proposal by the African Group (this sentence would then be followed by a listing of the countries having associated themselves with this position). They were of the view that the amendment fell outside the scope and objectives of the draft DLT and would not contribute to the harmonization or the simplification of design law formalities".

68. The Delegation of Kenya proposed the following language for a footnote: "The African Group rejects the arguments made in footnote 1. The African Group considers that the treaty is not finalized yet and that a disclosure requirement is a formality which is essential for the protection against misuse and misappropriation of traditional designs. The proposal was supported by the Delegations of India and Iran (Islamic Republic of) for its inclusion in the text".

69. The Delegation of Japan, speaking on behalf of Group B, endorsed the language proposed by the Delegation of the European Union.

70. The Delegation of Indonesia reiterated the view that there would be merit in finding a solution to this issue and that mentioning the positions of certain groups or countries only would not solve the problem.

71. The Chair concluded that the proposal of the African Group would be included into the revised version of the document between square brackets and that the different views on that proposal would be reflected in footnotes. Some delegations expressed concern with the timing and substance and indicated that they now have to reconsider their position on the process following these new developments. Some delegations stated that the convening of a diplomatic conference still depended on the inclusion into the draft Treaty of an article on technical assistance and capacity building.

## **AGENDA ITEM 6: TRADEMARKS**

### *Revised Proposal by the Delegation of Jamaica*

72. Discussion was based on document SCT/32/2.

73. The Delegation of Jamaica thanked SCT members for their comments and suggestions to the draft Joint Recommendation Concerning the Protection of Country Names, which had been reflected in the revised draft contained in document SCT/32/2. The revised preface clarified that the text would protect country names not only against conflicting marks but also against conflicting business identifiers and domain names. Some concerns had been expressed about the relation between the protection of country names and economic factors. Consequently, Article 10 as well as the concepts of false connection, minimum standard of protection and bad faith had been deleted. Following observations considering that the definition of country names was too broad, historical names and pronunciations had been removed from the draft, while other expressions of names had been retained. In addition, the amendments to Article 3 relating to opposition and invalidation, intended to clarify that Member States were not expected to create a new ground for opposition or invalidation and could refuse applications when marks consisting of or containing country names for goods and services which did not originate in the country concerned were likely to deceive the public as to the mere quality and geographical origin of the goods and services. Similarly, revisions to Articles 4 and 5 clarified that business identifiers and domain names consisting of or containing country names for goods or services that did not originate in the country concerned should not be registered or their use should not be permitted. Additionally, the revision provided for prohibition of registration and/or use, the cancellation or transfer of the registration of a conflicting business identifier or domain name to the relevant Member State. The Delegation considered that a Joint Recommendation of the Assembly of the Paris Union and the General Assembly of WIPO was a flexible and meaningful way to protect country names from deceptive use and abuse. The Delegation remained committed to working with SCT Members and the Secretariat to advance the work of the Committee in this area.

74. The Delegation of Barbados said that the absence of a common approach in relation to the protection of country names had led to inconsistencies in the registration and use of trademarks containing country names. A clear and transparent intellectual property approach to that issue would allow all countries to influence the use of their country names, thereby limiting abuse by third parties. In some instances trademarks could be misleading, dilute the efforts to brand country names or endanger the reputation associated with those names. For some countries like small developing countries, name recognition contributed significantly in the marketing of products, especially at the niche level and thus the lack of recognition could

negatively impact on their development. The Delegation was of the view that the revised version of the proposal by the Delegation of Jamaica was a good basis on which to pursue the work on country names.

75. The Delegation of the Czech Republic, on behalf of the CEBS Group, recognized that the revised proposal reflected number of concerns expressed at the last session of the SCT and further clarified the matter. The Delegation expressed support for the proposal, in order to eliminate adverse effects of deceptive and misleading uses of country names or other geographical names in trademarks. The Group also saw a possibility for further improvement of the proposal with regard to stakeholders other than countries and consumers, and called for a discussion on the interests of the current legitimate users of country names in trademarks.

76. The Delegation of Trinidad and Tobago considered that the comments and suggestions made to the draft Joint Recommendation had paved the way for a better understanding and dialogue on the protection of country names. Therefore, the Delegation reiterated its support to the proposal made by the Delegation of Jamaica and to the continuation of work under the current agenda item.

77. The Delegation of Bahamas supported the revised proposal and said that protection of country names was neither uniform nor comprehensive and many loopholes remained in trademark law and practice. Therefore, the proposal made by the Delegation of Jamaica, was an opportunity for small island developing States and small and vulnerable economies to reach uniformity, consistency and predictability in this area. The Delegation supported the comments made by the Delegations of Barbados and Trinidad and Tobago.

78. The Delegation of Hungary said that it shared some of the concerns described in documents SCT/31/4 and SCT/31/5. The Delegation believed that a divergent application of identical trademark provisions concerning grounds for refusal of misleading or deceiving marks would weaken the goals of consumer protection and harm the reputation of the countries whose names were at stake. When those names were misused, countries could also face difficulties in implementing their nation branding programs. The Delegation considered the use of "soft law" as a good tool to achieve convergence among intellectual property offices. Such a tool was flexible and allowed authorities to implement in a short period the best practices contained in the instrument. Joint Recommendations had proved to be successful and useful for the Intellectual Property community and therefore, the Delegation supported further work for adopting a new Joint Recommendation.

79. The Delegation of the European Union on behalf of its member states acknowledged the importance that some SCT members attached to the protection of country names and their use in national branding initiatives. The Delegation also recognized that trademarks, which used country names in ways that were deceptive or misleading as to the country of origin adversely affected consumers. In this regard, the Delegation expressed concern about uses of geographical names more broadly speaking. Before discussing a Joint Recommendation, it was necessary to explore the issue from all perspectives and also from the point of view of current users who might legitimately use country names in trademarks which had become well-known or even generic. The latter could prevent upsetting legitimately held business practices. The Delegation believed that awareness raising activities would usefully publicize the available mechanisms for refusal or invalidation of trademarks containing country names and provide further actions to the Committee in offering assistance and guidance in this respect.

80. The Delegation of Switzerland recognized that the level of protection given to country names varied considerably from one country to another and that abuses were increasingly frequent in a globalized world. The Delegation believed that the adoption of non-binding guidelines at the international level would be opportune. In addition, the Delegation considered that the revised draft had improved and clarified the proposal made by the Delegation of

Jamaica and would allow a detailed discussion on the proposed provisions. In particular, the Delegation welcomed the clear principle according to which country names could be validly used with products and services that actually came from the country concerned.

81. The Delegation of Italy aligned itself with the statement made by the Delegation of the European Union and reiterated its support to the adoption of a Joint Recommendation on the Protection of Country Names against unfair competition and deceptiveness. The Delegation mentioned cases of trademarks whose applicants tried to take undue advantage of the reputation of Italian food, design or fashion products by using terms that had an Italian consonance. In this regard, the revised draft Joint Recommendation appeared to be clearer and more streamlined than the previous text and constituted a step forward to promote a consistent treatment and protection of country names. The Delegation said that it stood ready to discuss each provision and believed that an agreement could be reached on a balanced instrument promoting the protection of country names while taking into account legitimate business practices. The proposed instrument would provide protection in cases where the use of country names is misleading, deceptive, false or generic.

82. The Delegation of the United States of America noted that while country names had traditionally been regulated but not owned, the proposed text seemed to be founded on the principle that governments owned and controlled their names including nicknames, abbreviations, assigned ISO country codes, etc. The Delegation considered that regulating country names on the basis of any principle beyond traditional consumer deception would potentially conflict with labeling requirements administered by other domestic and international agencies. The Delegation recalled the rules of origin for labeling imported and exported goods that were administered at the national and international level for varying policy purposes and indicated that the proposal for the protection of country names could have significant negative trade implications. Article 3 of the draft stated that an applied for or registered mark was deemed to be in conflict with a country name when the goods or services did not originate in that country. The Delegation therefore considered that the burden was placed on the applicant to rebut the presumption of deception according to Article 7. While various provisions made reference to other assessments in Articles 2 to 6, the only truly operative test was the presumption of deception. The Delegation noted that since consumers were unlikely to be familiar with every country name and its variations, such presumption of deception would be a difficult premise on which to base the proposal. Moreover, it believed that the determination in Article 3 of interested parties before an administrative tribunal or a federal court seemed to create by proxy a public interest or property right in the country name and other identifiers owned by the Government, which might not exist under national law. The Delegation called for an answer to those questions before any work on a draft Joint Recommendation could be undertaken.

83. The Delegation of Norway stated that a Joint Recommendation was not justified on the basis of the current protection of country names, as shown in the Study on the Protection of Country Names. The Delegation believed that the concerns expressed in the proposal made by the Delegation of Jamaica were already addressed by the possibility to refuse or invalidate the registration as trademarks of signs consisting of or containing country names. As demonstrated in the Study contained in document SCT/29/5 Rev., 95.9 per cent of the responding SCT members would refuse a trademark consisting of or containing a country name if the mark was considered descriptive and 98.5 per cent would refuse such a mark if it was considered misleading as to the geographical origin. The Delegation held the view that, use of country names in trademarks was unproblematic as long as it did not monopolize country names or misled the public as to the origin of the goods or services. Moreover, the Delegation expressed concern over the fact that the adoption of a norm on the protection of country names would impose unnecessary burdens on users who needed a flexible system in their marketing strategies. In addition, given the lack of sufficient information on the implications of the proposed system, the Delegation wondered why the interest of some States should prevail over

the interests of the users of the trademark system. Like the Delegation of the United States of America, the Delegation of Norway did not support State ownership of country names and thus, did not see the need to pursue the work on the proposal or on the protection of country names more generally. Nevertheless, should the SCT decide to further explore the topic, the consequences of such work for all stakeholders should be thoroughly studied and documented as a prerequisite to any future discussion.

84. The Delegation of China stated that it would make proposals on the draft Joint Recommendation after further studying the proposal by the Delegation of Jamaica and in particular the question of whether protection should be given to the short name, historical name, pronunciation and international country code.

85. The Delegation of South Africa indicated that the revised proposal presented by the Delegation of Jamaica had not addressed the reservations raised during the thirty-first session of the SCT. The Delegation remained concerned about the reference to harmonization of examination practices and determination of trademark registrability, as well as the mandatory language of the draft text. In addition, some provisions were contrary to the national law of South Africa in relation to trademarks and business names. The Delegation considered that the Paris Convention, national legislation and office practice provided sufficient protection for country names, as presented in the Study on the Protection of Country Names carried out by the Secretariat. The Delegation declared that South Africa did not support the proposal made by the Delegation of Jamaica and would only endorse a non-binding and non-prescriptive reference document.

86. The Chair requested the Secretariat to organize a side event to the next session of the SCT, which would offer background on various aspects of the protection of country names and nation branding. Following this side event, the SCT would revert to the item under consideration.

#### *Update on Trademark-Related Aspects of the Domain Name System*

87. Discussions were based on document SCT/32/3.

88. Upon invitation by the Chair, the Secretariat provided an update on trademark-related aspects of the Domain Name System (DNS). The Delegation of Hungary expressed its appreciation to the Secretariat for document SCT/32/3. The Delegation also conveyed its gratitude to the WIPO Arbitration and Mediation Center (the WIPO Center) for its role in the promotion of the protection of Intellectual Property rights in the context of the DNS expansion as new generic Top-Level Domains (new gTLDs) are delegated. The Delegation expressed concern about the protection of country and geographic names and geographical indications in the context of new gTLDs. The Delegation of Italy expressed its appreciation to the Secretariat for providing its update. The Delegation also expressed thanks for the work of the WIPO Center. The Delegation echoed the concerns of the Hungarian Delegation regarding the protection of country and geographic names and geographical indications in the context of new gTLDs. The SCT took note of document SCT/32/3 and the Secretariat was requested to keep Member States informed on future developments in the DNS.

**AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS**

89. Discussions were based on documents SCT/31/7 and SCT/31/8 Rev.2.

90. The Delegation of the United States of America said that it was pleased to continue the discussion on geographical indications at the SCT. The Delegation recalled that, at the previous session, its Delegation, supported by other WIPO Members, including Argentina, Australia, Canada, Chile, Israel, Japan, Norway, Paraguay, Republic of Korea, Russian Federation, Singapore, South Africa and Uruguay, had continued to advocate that the Committee discuss and study geographical indications. However, the Delegations of the Czech Republic, on behalf of CEBS, and of the European Union had indicated that the proposed study would not add any value to the work the SCT had done on geographical indications 12 years ago. With regard to concerns raised at the previous session of the SCT that the proposed study was merely a procedural maneuver intended to block the work of the Lisbon Union, the Delegation pointed out that it had been an active participant at the Lisbon Working Group and had not blocked the work to revise the Lisbon Agreement. The Delegation stressed the fact that it had attempted to assist with the Working Group's goal to make the text more inclusive and had clearly advocated for the changes needed to make the text compatible with trademark systems. The Delegation further said that it had taken the time and effort to participate in the Working Group in order to work towards a single global geographical indications filing system, as it believed that having multiple registration systems for the same subject matter, each compatible with only a handful of countries, was inefficient. In its view, multiple registration systems would not be competing where, as the Delegation of Italy had suggested last time, WIPO Members should be democratically able to choose between the Madrid System, which could only be used for geographical indications protected as marks and the Lisbon System, which could only be used for *sui generis* geographical indications, or where, as the Delegation of Iran (Islamic Republic of) had suggested, WIPO members should be able to choose the system that they needed. The Delegation of the United States of America was of the view that there was no choice for applicants to make, nor for prospective contracting parties, as one could only join the WIPO geographical indication system that would accommodate one's national system and applicants could only use the system to which their country was a Contracting Party. In other words, a geographical indication holder in a Lisbon Contracting Party would be unable to use the Madrid System to get geographical indication protection in trademark countries and a trademark holder in a Madrid Contracting Party would not be able to use the Madrid System to get protection in *sui generis* geographical indication systems. The Delegation expressed the hope that the New Act of the Lisbon Agreement could be flexible enough to link up all national systems. The Delegation sensed, however, a reluctance on the part of the current Lisbon Agreement members to accept the amendments that the United States of America would need to be able to join the Lisbon System. The Delegation stated that, if the current Lisbon Union membership was not interested in making the necessary revisions to allow the United States of America and other similarly situated countries to join, it would need to consider whether it would then need to seek a different geographical indications registration system that would suit the needs of non-Lisbon members. Since this would be a substantial undertaking and in order not to make any mistakes or exclude any national system, the Delegation sought information about those systems in the Secretariat-prepared study proposed at the previous session of the SCT. Indicating that the global landscape had changed since 2002 and that anything the Committee had learned back then was likely very different nowadays, the Delegation said that, if a geographical indication registration system was not the right direction to go once the SCT would have the study prepared, perhaps the SCT would find that there were some best practices across all national systems on which it could focus. Finally, reiterating its proposal put forward in document SCT/31/7 to request a study from the Secretariat that would help to understand the diverse geographical indication systems that existed around the world, the Delegation asked if members who had opposed the study could now support it.

91. In reply to the invitation by the Chair to introduce the proposal outlined in document SCT/31/8 Rev.2, the Delegation of Hungary, supported by the Delegations of the European Union and Italy, said that the subject matter of the two proposals was different. The Delegation proposed to discuss the proposals separately.
92. The Delegations of El Salvador, Guatemala and Uruguay expressed their support for the proposal by the Delegation of the United States of America.
93. The Delegation of Argentina expressed the view that the SCT was the right forum for discussing geographical indications at WIPO. Taking into account the different existing systems of protection for geographical indications around the world, the Delegation expressed its support for the proposal made by the Delegation of the United States of America in document SCT/32/7. The Delegation believed that the study would provide an overview of the different systems of protection and would be helpful for national authorities and users as a reference document.
94. The Delegation of Chile, concurring with the view that the SCT was the right forum and had a mandate to discuss geographical indications at the international level in a participatory manner, expressed its support for the proposal made by the Delegation of the United States of America.
95. The Delegation of Japan, indicating that the SCT was the appropriate forum in WIPO to discuss geographical indications, supported requesting the WIPO Secretariat to launch a study to examine the various national legal approaches to geographical indications and to explore the feasibility of a geographical indications filing system. The Delegation expressed the hope that such a study would deepen the understanding on various geographical indication issues.
96. The Delegation of the Republic of Korea, expressing its support for the proposal made by the Delegation of the United States of America and for the discussion on geographical indications, noted that there had been a significant but controversial development on geographical indications, stressing the fact that an international registration system for geographical indications might come out without an inclusive discussion by WIPO Member States. The Delegation further wondered whether the recent developments concerning the Lisbon Agreement would be discussed at the current session.
97. The Delegation of the European Union, on behalf of its member states, thanked the Delegation of the United States of America for the proposal outlined in document SCT/31/7. The Delegation recalled that the Lisbon System for the International Registration of Appellations of Origin was under review and that the Diplomatic Conference for the Adoption of the revised Lisbon Agreement on Appellations of Origin and Geographical Indications would convene in 2015. The key aim of that revision was to provide for means for obtaining geographical indication protection internationally through a single registration, thus making the Lisbon System more attractive to countries that currently were not a party to it, so that the system might expand and reach a wider membership. Noting that the Lisbon Working Group had agreed on the text which should constitute the basic proposal for the Diplomatic Conference, the Delegation said that all WIPO members, international organizations and non-governmental organizations had been able to participate in the Working Group and make their views known. The Delegation believed that the work of the Working Group had been open, inclusive and transparent. While the prevailing debate on the approaches to the protection of geographical indications was acknowledged, the Delegation believed that the best way to accommodate the diversity of national systems was the expansion of the relevant registration systems run by WIPO, namely the Lisbon and Madrid Systems. The Delegation stated that moving ahead with the revision of the Lisbon System should be WIPO's first priority on geographical indications and that activity would lead to improvements in relation to the diversity and the flexibility allowed to Member

States by the TRIPS Agreement. Consequently, since it did not feel that the study proposed by the Delegation of the United States of America would add value, the Delegation of the European Union declared that it was not in a position to endorse it.

98. The Delegation of Australia expressed its support for the discussion on geographical indications within the SCT, which was the appropriate forum for an inclusive discussion of these matters, particularly because of the diversity of geographical indication regimes established in the membership. Indicating that geographical indications were an intellectual property subject for which there were different approaches among WIPO members, the Delegation believed that appreciation of each other's perspectives and a better understanding of how the different approaches worked in practice might help to reveal genuine similarities and differences. As highlighted at previous sessions, Australia had long experience with the operation and interface of two different registration regimes for geographical indications, although it was not the only country which provided for more than one method of protecting geographical indications. With regard to comments that the Madrid System was available for those WIPO members that protect geographical indications under the trademark system, the Delegation believed that it should not be necessary to have to use two international filing regimes to seek international protection for one geographical indication, but that it was possible to develop an international filing system that could be used to obtain protection for geographical indications regardless of the regime under which they had been first protected, and regardless of the regime in place in contracting parties. In this regard, the Delegation recalled that Australia protected as certification marks geographical indications that had been protected under *sui generis* systems in the country of origin. The Delegation expressed the view that a study on the national law approaches to specific geographical indications topics could be very informative for the SCT members and could be illuminating to exchange information about how different WIPO members dealt with specific issues under their laws. For instance, Australia operated under the principle "first in time, first in right", which did not preclude an outcome of co-existence. In relation to registered trademarks later becoming generic, there are few instances of this actually occurring. Reiterating its interest in exploring the policies and outcomes under other systems, the Delegation said that the study would inform the SCT on whether the risks which Australia believed that the revised Lisbon text was trying to address were probable or even existed.

99. The Delegation of Italy, aligning itself with the statement made by the Delegation of the European Union, said that it wished to confirm its position expressed at the previous session of the SCT. While thanking the Delegation of the United States of America for proposing a work plan on geographical indications, the Delegation stated that it was not in a position to endorse it. Welcoming the assurances of the Delegation of the United States of America on their commitment to a successful conclusion of the revision of the Lisbon System, the Delegation regretted that some supporters of that proposal were not exactly of the same view. However, the Delegation remained of the view that, as drafted, the main purpose of that proposal was to block or delay the work of the Working Group on the Revision of the Lisbon Agreement and to question the very same existence of the WIPO Lisbon System. Reiterating the view that the SCT was not the appropriate forum for discussing and taking any decision on the work of another expert working group and, more in general, on the fate, features, operations and finances of a WIPO global intellectual property system, such as the Lisbon System, the Delegation indicated that the revision of the Lisbon Agreement was a transparent and inclusive process, seeking to adapt the 1958 Lisbon Agreement to the evolving international legislation on intellectual property rights to make it more attractive, while preserving its principles and objectives. Assuring that constructive proposals from WIPO members that were not party to the current agreement had been and would continue to be welcome by the Lisbon member States, as a valuable contribution to the achievement of the goals of the revision, the Delegation said that it looked forward to continuing such productive dialogue in the remaining steps of the process, notably in the Diplomatic Conference scheduled for May, 2015. The Delegation further noted that, together with many other WIPO Member States, it had been actively engaged in the revision of the Lisbon Agreement with a firm belief that its successful conclusion would bear

significant benefits, reiterating that the revision only aimed at improving and updating the legal framework of the system and not at introducing a new system. The Delegation pointed out that already at that date, under certain conditions, a geographical indication could be protected if the existence of a link between the product and its area of origin was proven, even if that indication was protected at the national level by a certification mark. The Delegation believed that, on this basis, the revision did not harm the work of the SCT on the Law of Geographical Indications. As to the substance of the work proposed by the Delegation of the United States of America, the Delegation believed that such work would not add value to the work carried out in the past within the SCT or to the work currently carried out within the World Trade Organization (WTO). Recalling that a lot of work on geographical indications had already been done in the past within the SCT, as reflected in documents SCT/8/4, SCT/9/4, SCT/9/5 and SCT/10/4, the Delegation reiterated the view that there were no new elements that required restarting this work, which would also duplicate the work in WTO. In this respect, the Delegation believed that another study on national geographical indication legislations would lead to the conclusions that were already known, namely that some countries protected geographical indications through the trademark system and others had developed so-called *sui generis* systems. Those *sui generis* systems recognized geographical indications as independent intellectual property rights in line with what had been established at the international level. They provided a more specific protection from misappropriation to names, the reputation of which was due to particular features of a geographical area, including biodiversity or traditional knowledge developed therein. Indicating that it would not like to debate what type of legislation on geographical indications was the best, as that was an evaluation to be made by each Member State, the Delegation observed that a solution desirable for some countries might not be desirable for other countries. Thus, in light of the diversity of national systems, filing systems administered by WIPO, as the Lisbon and Madrid Systems, were the best way to accommodate such diversity and to leave to Member States the democratic right to choose which system of protection they wanted to have. Observing that the different filing systems had to preserve such diversity and prevent the situation where one type of legislation prevailed over the other, the Delegation said that blocking the revision of the Lisbon Agreement would undermine this diversity and limit the flexibility allowed to Member States by the TRIPS Agreement. Finally, the Delegation stated that the Lisbon Agreement facilitated the protection of appellations of origin and geographical indications abroad and that its revision aimed at offering an additional choice to producers, and not to replace other available international tools.

100. The Delegation of the Russian Federation recalled that it had proposed to the SCT to renew its work on geographical indications on several occasions. The Delegation said that the Russian Federation had been interested in a discussion on geographical indication before joining the WTO, in order to better understand the TRIPS obligations and to be aware of experiences in that area. At that time, the Russian Federation did not provide for the protection of geographical indications and had a need to learn about the various systems of protection throughout the world. The Delegation had further reiterated its interest in continuing work on geographical indications within the SCT, even after joining the WTO. The Delegation explained that it had faced many practical and theoretical problems which had led to a need to reform the national legislation, so as to create a user-friendly system of protection of geographical indications, both for national and international applicants. The Delegation, recognizing the differences between various systems for the protection of geographical indications, pointed out that updated information on the different approaches would be valuable to reform the system of the Russian Federation and to give it maximum efficiency. The Delegation also believed that this information would help to understand how Russian geographical indications could benefit from protection in other countries. Finally, recalling that the Secretariat had already carried out surveys and had updated them on various occasions, for instance, in the field of trademarks and industrial designs, the Delegation concluded that a similar approach in the field of geographical indications was necessary.

101. The Delegation of Turkey, indicating that it would be useful to explore the different national approaches to geographical indications within the SCT, expressed its support for the proposal submitted by the Delegation of the United States of America.

102. The Delegation of France aligned itself with the statements made by the Delegations of the European Union and Italy. Indicating that it had studied thoroughly the proposal since the previous session of the SCT, the Delegation said that it did not see any added value in a further study on the different methods of protection of geographical indications. In the view of the Delegation, WIPO's priority in the field of geographical indications should be the improvement of the registration system provided for by the Lisbon Agreement.

103. The Delegation of the Republic of Korea recalled that the Revised Draft Act of the Lisbon Agreement on the Protection of Appellations of Origin and their International Registration included the term "Geographical Indication" in the text. Based on the fact that appellations of origin were a special kind of geographical indications, the Delegation believed that the Draft Revised Lisbon Agreement enlarged the scope of protection. Furthermore, as per the final decision of the Lisbon Union members on the Draft Rules of Procedures for the Diplomatic Conference, WIPO Member States other than the 28 Lisbon Union members would not have the right to vote or to participate in some important committees at the conference. The Delegation believed that that was a serious restriction to the authority of WIPO Member States. Finally, insofar as, according to the WIPO web page, the SCT had been created in 1998 to serve as a forum to discuss issues on the progressive development of International Law on Trademarks, Industrial Designs and Geographical Indications, including the harmonization of national laws and procedures, the Delegation stated that geographical indications should be discussed within the SCT with the participation of all WIPO Member States. The Delegation further expressed the view that without open discussions on geographical indications there could be no developments of the international legislative framework. In conclusion, the Delegation urged the Lisbon Union members to give their opinions upon these three facts.

104. The Delegation of Switzerland, while recognizing the competency of the SCT on the subject of geographical indications, expressed the view that opening up parallel platforms for discussion of this subject would be counterproductive. The Delegation believed that resuming the SCT's work on geographical indications with new studies on the national and international situation at this stage would question the work done in the Working Group on the Development of the Lisbon System. The Delegation, for that reason, expressed its support for the statements made by the Delegations of the European Union and Italy.

105. The Delegation of Hungary expressed its support for the arguments put forward by the Delegation of the European Union, on behalf of its member states, the Delegations of France, Italy and Switzerland. The Delegation expressed the view that the proposal by the Delegation of the United States of America would not bring new information to the table and that a number of studies had already been carried out on the same matter, including the deliberation on the definition and the national legal framework of geographical indications, as highlighted in documents SCT/8/4, SCT/9/4, SCT/10/4, while the relationship between trademarks and geographical indications had been tackled in document SCT/5/3. The Delegation wished to underline the fact that the SCT should not intervene or overrule the work and the results of a working group established under an independent WIPO-administered treaty. If it did, the SCT could easily control the activity of working groups created for further development of the Madrid System, the Hague Agreement or the Nice Agreement, provided that some members or non-members of the cited unions were not in agreement with the presumed outcome. The Delegation recalled that the Lisbon System was already neutral on how countries should provide protection for appellations of origin, since there were no provisions that would entail the obligation to introduce *sui generis* type of geographical indication protection into the national legislations. The Delegation noted that the TRIPS Agreement established the minimum requirements for the protection of geographical indications but did not prevent countries wishing

to have higher protection for geographical indications to do so. The Delegation declared that, for all of these reasons, it did not support future work on the basis of the proposal put forward by the Delegation of the United States of America.

106. The Delegation of Iran (Islamic Republic of), aligning itself with the statements made by the Delegations of France, Hungary, Italy, Switzerland and the European Union, recalled that the work on the revision of the Lisbon Agreement aimed at broadening the scope of its application and improving the legal framework regulating the protection of geographical indications. The Delegation believed that the system, while preserving the principles and the objectives of the Lisbon Agreement, extended the scope of protection to geographical indications, thus offering to all producers from both developed and developing countries an opportunity to protect their products. The Delegation said that all Lisbon Union members had shown a high level of flexibility in the process of negotiations, having tried to incorporate in the text the proposals of all participants in the Working Group. The Delegation expressed the view that the refinement of the current legal framework and its extension to geographical indications, while maintaining separate definitions with similar substantive provisions, would not change the subject matter of the agreement. Moreover, the Delegation believed that the proposed revision would make the system more simplified and user friendly. The Delegation further noted that the amendments of the provisions of the Lisbon Agreement would concern only the member States of the Lisbon Union. The Delegation recalled that some countries used trademark systems to protect geographical indications, while many countries had developed *sui generis* systems. In light of the diversity of national systems, filing systems administered by WIPO, like the Lisbon and Madrid Systems, were the best options to accommodate such diversity and to empower Member States to choose the system of protection they needed. The Delegation pointed out that the mandate of the SCT to discuss geographical indications should not be interpreted as meaning that the Committee would have the authority to prevent the Contracting Parties to the Lisbon Agreement from revising the Lisbon System. The Delegation also believed that both the SCT and the Lisbon Union could discuss geographical indications within their respective mandates. Finally, while thanking the Delegation of the United States of America for its proposal, the Delegation expressed the view that the proposal did not bring any added value to the work done by the Standing Committee in the past in the field of geographical indications.

107. The Delegation of Greece, aligning itself with the statements made by the Delegations of France, Hungary, Italy, Switzerland and the European Union, recalled that the Lisbon System for International Registration of Appellations of Origin was under review and a diplomatic conference would convene in 2015. The Delegation expressed its support for the convening of the diplomatic conference on the revision of the Lisbon System as its purpose was to strengthen and modernize the existing legal framework, thus making it more attractive. The Delegation concluded that moving ahead with the revision of the Lisbon System should be WIPO's first priority on geographical indications.

108. The Delegation of Portugal, expressing its support for the statements made by the Delegations of France, Greece, Hungary, Iran (Islamic Republic of), Italy, Switzerland, said that it remained doubtful of the added value that an additional survey on existing national regimes would entail. Given the amount of data and knowledge already available in this field, the Delegation believed that the SCT should focus on other aspects related to geographical indications.

109. The Delegation of Chile noted that Chile provided for *sui generis* protection of geographical indications, which were seen as a tool for the development of the country. Observing that the subject of the proposal was beyond the revision process of the Lisbon Agreement, the Delegation pointed out that some delegations not Contracting Party to the Lisbon Agreement had seen value in that proposal, in view of the need to reform their national systems. The Delegation had the feeling, by listening to some interventions, that in the view of some delegations a discussion on geographical indications was not possible because some

SCT members were not members of the Lisbon Union. The Delegation believed that this was not the right path to take, in particular, considering that the SCT had competency over geographical indications. Finally, the Delegation recalled that the work of updating studies had already been carried out in the past and reiterated the need of that study for the benefit of all WIPO Member States.

110. The Delegation of the Czech Republic, on behalf of the CEBS Group, expressed its support to the statements made by the Delegations of France, Greece, Hungary, Italy, Portugal, Switzerland, the European Union, and others. The CEBS Group did not feel that a study as proposed by the Delegation of the United States of America would bring added value to the work already done by the SCT.

111. The Delegation of Canada said that the SCT was the appropriate forum for a discussion on geographical indications. The Delegation believed that there could be added value in a study on the various systems of geographical indication protection as national systems did differ. The Delegation noted that during the last years various bilateral and multilateral treaties had been signed and, therefore, it was timely to update the work that had been carried out at WIPO some years ago. The Delegation also pointed out that the question of the genericness test had never been fully scoped out and that it would be interested in a study on that issue. The Delegation considered that the proposal had merit in light of the fast developing discussions on geographical indications at multilateral, bilateral and regional levels and the need to understand the emerging global understandings on this issue. In conclusion, the Delegation stated that Canada continued to support an open Diplomatic Conference for the Revised Lisbon Agreement with full voting rights for all WIPO Member States as this would have implications beyond the Lisbon System.

112. The Delegation of the United States of America thanked all delegations for their engagement and discussion on its proposal. The Delegation concurred with the Delegation of Australia in that there should not be a need for two systems to protect geographical indications globally. For those familiar with the Hague System, the Delegation recalled that the 1960 Act was an Act which was used only by countries with registration systems. The 1999 Act of the Hague Agreement opened up the system to countries with examination systems. Currently, many countries were adhering to that Act, including the United States of America. The Delegation pointed out that a similar concept was needed for geographical indications, with a system that would work for everyone. Further, the Delegation expressed appreciation for the comments by the Delegation of the Russian Federation with regard to the benefits that a study could provide to countries that were to amend their own laws. The Delegation recalled that at the thirty-first session of the SCT, a call for delegations to join the Lisbon revision discussions had been launched, in order to ensure a more meaningful and inclusive outcome. With that invitation, the Delegation of the United States of America with a number of other WIPO members had participated and submitted a Proposal to the Preparatory Committee of the Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications that the draft rules of procedure for the diplomatic conference be revised to allow all WIPO members to participate, to be in meetings of the working group and to make proposals to revise the draft text. The Delegation said that the proposal had not been accepted and that the diplomatic conference would apply Rules of Procedure that excluded WIPO members who were not also Lisbon members from meaningfully participating in the Diplomatic Conference for the New Act of the Lisbon Agreement. The Delegation had the feeling that, not only did most of the Lisbon membership not accept the proposal, but it was clear that there was no interest in seeking a compromise. To the Delegation's regret, the very Delegations that had invited to join in the Lisbon discussions had applauded the exclusion of other WIPO Member States from meaningful participation at the diplomatic conference. Due to those mixed messages, the Delegation wished to keep all options on the table, including pursuing work on geographical indications at the SCT in addition to continuing to engage on the Lisbon text. While the Delegation hoped that the New Act of the

Lisbon Agreement could be revised in a manner that would allow all WIPO members to join, the Delegation was skeptical that it would be possible, based on the Lisbon Preparatory Committee meeting. The Delegation believed that the unwelcome reception of non-Lisbon members at the Preparatory Committee meeting was inconsistent with the goal of increasing accessions, as well as the Lisbon Union's insistence on adhering to the so-called "principles" of the system was inconsistent with providing the flexibility needed to increase membership. The Delegation considered that those principles were inconsistent with the aim of increasing the attractiveness of the system because they were not modern notions of how intellectual property protection should operate as they interfered with the normal functioning of national laws and national systems. The Delegation noted that although the Lisbon membership had not revised the draft rules to allow other WIPO members to participate during the meeting, they had given all an opportunity to participate before the meeting. The Lisbon Union had indicated that proposals submitted before February 1, 2015, would be considered during the diplomatic conference. The Delegation encouraged other WIPO Member States to submit proposals. The Delegation further said that during the Lisbon Working Group meetings, the United States of America had made several proposals that had been reflected in brackets or as options in the draft text. With regard to those, the Delegation wished to give some background. From the perspective of the United States of America, the Delegation believed that the existing Lisbon Agreement and the current draft of the revised Lisbon text continued to reflect a historical and fundamental feature of the old appellation of origin systems of the world. Those systems were dependent on the involvement and influence of governments in the whole protection process. The Delegation said that its interventions on the draft text had been aimed at allowing a private party, the geographical indication owner, to prosecute its application through the foreign geographical indication system without having to rely on its government, or otherwise minimizing the need and the influence of a foreign government and the use of public funds in obtaining exclusive geographical indication protection in various territories. The Delegation expressed the view that involving governments in that private property rights protection system would turn that system into a conversation between governments, otherwise known as a trade forum, where rights were traded back and forth. The Delegation supposed that, at first glance, that might sound appealing because one could achieve free protection for geographical indications in foreign markets. However, the Delegation considered that the imbalance in numbers of incoming requests for geographical indication protection for which the taxpayers would bear the costs must also be considered. The Delegation further stressed the fact that the draft Lisbon revision text encouraged and allowed foreign governments to influence and otherwise interfere with the normal intellectual property system functioning and principles. The Delegation observed that if a term was generic in a country, while that country was theoretically free to refuse the notified Lisbon term, the text encouraged the country to accept the geographical indication and phase out the prior generic use. And if the country refused to protect a notified Lisbon term because it was generic in its market, a foreign government would have the ability to request negotiations with the country to pressure it to withdraw that refusal. The Delegation believed that the same was true with respect to any prior trademark rights on a market. The text encouraged the country to ignore them and to protect the geographical indication anyway, for the benefit of the foreign geographical indication owner. The Delegation was of the view that it looked like a government to government trade negotiation and less like a geographical indication application process governed by national law. Further, the Delegation drew attention to the fact that under the Lisbon Agreement, a geographical indication could never become generic once 12 months had passed and no objection had been made. That would mean that Contracting Parties could not require use or maintenance of the foreign geographical indication as a condition of continued protection in a market. In other words, no fees could be collected in return for reserving these foreign geographical indications rights in perpetuity. The Delegation expressed the opinion that that reservation right seemed like a negotiated trade outcome, rather than a principle of intellectual property protection. With regard to fees, while the Delegation of the United States of America had pressed for the possibility that individual fees should be allowed to be collected in order to cover the costs of examination, the Delegation had the feeling of resistance in the Lisbon Union to that idea. That resistance seemed strange to the Delegation,

as it noted that current Lisbon Agreement members such as Algeria, Bosnia and Herzegovina, Burkina Faso, Costa Rica, Cuba, Georgia, Iran (Islamic Republic of), Montenegro, Nicaragua, Peru, Serbia, and the former Yugoslav Republic of Macedonia all required an administrative fee for applications that did not use the Lisbon System. The Delegation wondered whether those countries provided for examination only for directly filed geographical indication applications and not for Lisbon applications, or whether they just were forgoing the fee under Lisbon. The Delegation believed that that differential treatment of nationals applying for protection through different routes was puzzling. The Delegation drew the attention to the bracketed text in the draft New Act that would allow a fee to be collected. Further the Delegation pointed out an option in the text allowing the Lisbon Union members to decide, only after a country would accede to the New Act, whether that country would be able to collect examination fees at the national level. Considering the imbalance in numbers, the Delegation believed that the resistance to an individual fee was even more puzzling. The Delegation noted that several Lisbon members had no appellations of origin on the Lisbon Register but had accepted, with no fees, all of the incoming Lisbon notifications for protection in their territory. Several other Lisbon members had refused protection of one or more terms but still could not charge a fee for the examination that they had undertaken. Others had only a small number of terms registered: Algeria (7), Costa Rica (1), Democratic People's Republic of Korea (6), Iran (Islamic Republic of) (5), Israel (1), Mexico (14), Montenegro (2), Peru (8), Portugal (7), Republic of Moldova (1), Serbia (3), Slovakia (6), the former Yugoslav Republic of Macedonia (4) and Tunisia (7), but had taken in hundreds of foreign notifications for no fee. The Delegation wondered what a reciprocal rights system meant to a Contracting Party that had none or just a few of their own rights being enforced in other countries. While these were choices that existing Lisbon members had made, the Delegation did not see a "reciprocal rights" system as being in the best interest of the United States of America purely based on the imbalance of numbers, in addition to other reasons. The Delegations said that its interventions in the text had been intended to allow those who did not subscribe to a reciprocal rights system to process applications for geographical indication protection within their own legal system without foreign governmental influence. The Delegation assured that the comments it would submit by the February 1, 2015 deadline would continue to reflect that intention. The Delegation further noted that once a notified Lisbon geographical indication was protected, a country had to protect it against "misuse" even if the national law did not traditionally define such a conduct as "misuse". In other words, even if there was no act of unfair competition or the consumers were not misled or confused, a country still had to provide protection against any use that "usurped" or "imitated" or "evoked" the foreign geographical indication even if the foreign geographical indication was not actually being used by the foreign geographical indication holder in that country's market. The Delegation assumed there was a wide variation on how national laws would define misuse. When submitting comments before the February 1, 2015 deadline, the Delegation would consider how the New Act of the Lisbon Agreement could preserve the flexibility of WIPO members to apply national laws to this determination. Finally, the Delegation said it would continue to try to engage with the Lisbon Union because it would not want to see this opportunity to find a global geographical indication solution wasted. The Delegation expressed the hope that the New Act of the Lisbon Agreement would be one it could join. But if, despite its very best efforts to constructively engage in the drafting of a New Act of the Lisbon Agreement, the Lisbon Union would decide to finalize a New Act that would be inconsistent with the concept that private rights holders should be able to pay the administrative costs of the system that would benefit them, the Delegation would make another opportunity in a more inclusive forum than the one provided by the Lisbon Union to give the freedom to national trademark systems or geographical indications systems to operate as they were designed to do.

113. The Delegation of Hungary presented a proposal, jointly sponsored by the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Republic of Moldova and Switzerland, as contained in document SCT/31/8 Rev.2. The proposal dealt with the protection of country names and geographical indications in the DNS. The Delegation recalled that the availability of the mediation and arbitration procedures in the DNS for geographical indications had previously

been addressed by the SCT in late 1990. Consequently, WIPO had conducted two studies in the course of the first and second WIPO Internet Domain Name Processes. Interviews of stakeholders undertaken at that time had shown that country names, important geographical names and geographical indications were targets of cybersquatting. Despite this signal, the Delegation regretted that the admissibility of complaints under the Uniform Domain Name Dispute Resolution Policy (UDRP) still remained limited to trademarks only. In its opinion, it was difficult, if not impossible, to justify that interests of trademark owners against conflicting domain names were preserved in an efficient and frequently used system, such as the UDRP, while the same possibility was not provided for individual States or holders of geographical indications. The Delegation recalled that, as a consequence of this missing balance, the WIPO General Assembly had already tried, in 2002, to remedy the situation by recommending to the Internet Corporation for Assigned Names and Numbers (ICANN) the extension of the UDRP to country names and further reflection on geographical indications. However, the Delegation observed the unchanged scope of domain names mediation and arbitration and the lack of progress on this issue. Based on a negative experience and unresolved issues from the past, delegations and observers had continuously stressed, since the twenty-fourth session of the SCT, their concerns about the new top level domain names introduced by ICANN in 2013. The Delegation had highlighted that any new development of the existing framework would open the door to new unlawful uses of intellectual property rights, without providing efficient legal remedies for right holders. At the same time, the Delegation noted that discussions within the SCT had influenced the norm setting process of ICANN with positive effect on enhanced legal rights protection mechanism in the area of trademarks. In this regard, the extension of the UDRP to new generic top level domain names for trademark disputes or the protection of intergovernmental organizations names were good examples. However, the Delegation regretted that significantly improved provisions of the ICANN Application Guidebook failed to resolve important issues, such as the protection of country names and geographical indications. As to the list of important geographical names, the Delegation said that it was neither convinced by the faithful application of this list nor as to the ambition of the list of including all important geographical names. In its view, it would be beneficial for all stakeholders to analyze the selection methods of important geographical names and the possible improvement of the list. Even though names of countries, names of capitals and names of geographical places were incorporated into the list, ambiguity appeared as to whether the list contained all variations of those names, including translations, historical names and commonly used abbreviations, and whether the distinction had been made between important and not important names. The Delegation recalled that several delegations had previously considered that the list of important geographical names should be extended to protected geographical indications, the use of which, as top level domain names, conveyed information to consumers about the geographical origin of the product. The Delegation reported that geographical indications were often subject of unlawful misuses, which were extremely harmful for consumers, producers and local communities. Therefore, it was a well-founded demand from beneficiaries of geographical indications to have guarantees that their legitimate interests would be preserved in the new generic DNS. While the new legal rights protection mechanism, recently introduced, was available to business operators protecting their geographical indications on the basis of trademark law, the Delegation stressed the fact that holders of geographical indications under *sui generis* systems had no possibility to protect their rights. Consequently, the Delegation, together with the co-sponsoring delegations, suggested opening discussions regarding both issues at the next session of the SCT, namely the limited nature of the list of important geographical names administrated by ICANN and the possible extension of the scope of WIPO UDRP to country names and geographical indications, so as to create a solid basis for the discussions and make available updated information to delegations and observers. The Delegation of Hungary and the co-sponsoring delegations proposed that the SCT request the Secretariat to conduct studies on these issues based on the criteria outlined in the written proposal.

114. The Delegation of Spain declared that it wished to be added to the list of co-sponsors of the proposal contained in document SCT/31/8 Rev.2.

115. The Delegation of the European Union, on behalf of the European Union and its member states, stated that the European Union and its member states attached great importance to the protection of geographical indications because of their high commercial value. The Delegation expressed its interest in the proposal to conduct a study that should investigate whether the needs of users for the protection of geographical indications in the DNS had changed, whether the measures available for holders of geographical indications against infringing domain names were effective enough, and how the existing legal and procedural framework could be improved. In conclusion, the Delegation considered that the proposal should serve as a basis for the future work of the SCT under this agenda item.

116. The Delegation of Germany echoed the statements made by the Delegations of Hungary, Spain and the European Union. The Delegation noted that the proposal concerned a concrete issue and had a great amount of practical relevance. The Delegation expressed the hope that the proposal would gain broad support and would be discussed in the SCT.

117. The Delegation of Monaco, expressing its support for the joint proposal, acknowledged that the Principality of Monaco had encountered a large number of problems and difficulties such as those described in the document.

118. The Delegation of Italy recalled that, at the last session of the SCT, it had proposed to discuss the protection of geographical indications in the DNS. The Delegation stressed the fact that these matters appeared as more urgent today, in the light of the increasing role of Internet in a global movement of goods and services and the expansion of top level domain names and, particularly, of the issuance of new generic top level domain names. The Delegation said that the growing number of first and second level domain names had increased the risk of abusive registrations of geographical indications and country names, amplifying the request of geographical indication users for effective measures against cybersquatting. For this reason, the Delegation of Italy and the co-sponsors had put forward a proposal aimed at discussing within the SCT, on the basis of a study, the concerns of geographical indication users and of individual States. The goal of the proposal consisted in recommending the modification of the UDRP to allow filing complaints against abusive registration and use of geographical indications and the broadening of the scope of the UDRP to country names, following the decision of the General Assembly in 2002. The Delegation said that it was difficult not to recognize that the interests of trademark owners against conflicting domain names were preserved through an efficient and frequently used system, such as the UDRP, while the same possibility was not provided for individual States or owners of geographical indications. The Delegation said that the diversity among national legislations was no longer tenable to deny equal dignity to all recognized intellectual property rights and the need of protection of geographical names in the DNS. Indicating that the proposal also addressed the risk of abuses in the delegation of the new generic top level domain names, the Delegation recalled that ICANN had developed a list of important geographical names and had established that any application for a generic top level domain containing such names had to meet an additional requirement, namely the consent of the country or the local government concerned. The Delegation, however, believed that more clarity on the selection standards used to create the list and on the possibility of States to include further geographical names was needed. The Delegation wondered about the effectiveness of that remedy and the methods of its application, and whether it covered as well variations of important geographical names. The Delegation believed that the list of important geographical names had to be inclusive and contain all names historically, culturally and commercially important for a country or local government. The Delegation added that the list should include protected geographical indications and protected appellations of origins. Finally, the Delegation said that the work in this area was in the interest of all WIPO Member States and

asked the Secretariat to prepare a working document on the protection of important geographical names and the delegation of generic top level domains in order to be able to formulate a recommendation to revise the ICANN Application Guidebook.

119. The Delegation of Mexico, indicating that there was a need to extend the UDRP to country names and geographical indications, expressed its support for conducting a study based on the criteria outlined in the document. The Delegation also expressed the view that the current work in the SCT with regard to the draft joint recommendation on country names should be taken into consideration.

120. The Delegation of the United States of America thanked the Delegation of Hungary and the co-sponsors for the proposal outlined in document SCT/31/8. While understanding that some delegations had requested work in that area due to concerns about misuse of geographical indications in the DNS, the Delegation stated that its position was not in favor of that proposal. The Delegation, as an active participant in the Lisbon Working Group over the past several sessions, had observed wide disagreement amongst Working Group participants on the appropriate scope of protection for geographical indications against misuse. Taking into account the lack of consensus as to the scope of rights, the Delegation believed that the matter must be addressed before the SCT could effectively advise ICANN on how to identify misuse in the domain system. The Delegation stated that it refused to shift the work that the SCT failed to do on to the ICANN constituencies, responsible for developing rules for the administration of the DNS and which potentially had less competence in the field of geographical indications.

121. The Delegation of the Czech Republic, on behalf of the CEBS Group, observed that the misleading use of geographical indications and other important geographical names as domain names was a practice that right holders had little or no means to fight against on the international level. In its view, the proposal reflected well-grounded concerns as to the limited role of Member States in shaping the system of protection of geographical indications on the Internet. Since domain names had a substantial and growing impact on consumers' behavior in developed as well as in developing countries and LDCs, the Delegation considered that the issues contemplated by the proposal, namely expanding the scope of the WIPO UDRP to country names and geographical indications, were appropriate for further discussions within the Committee. For the above mentioned reasons, the CEBS Group expressed strong support for that proposal.

122. The Delegation of Chile concurred in the view that the SCT should examine the conflicts between domain names and geographical indications. The Delegation supported the proposal to conduct a study that should investigate whether the needs of users for the protection of geographical indications in the DNS had changed, whether the measures available for holders of geographical indications against infringing domain names were effective enough, and how the existing legal and procedural framework could be improved. Based on the results of the study, the Delegation would conclude whether to support a joint recommendation and the revision of the ICANN Application Guidebook.

123. The Delegation of Australia, concurring with the view that intellectual property rights, including geographical indications, should not be misused in the DNS, said that the existing safeguards, including those proposed by the ICANN Government Advisory Committee (GAC) in the Beijing Communication, were appropriate and sufficient to deal with the potential misuse. The Delegation stated it was not convinced that any need for additional safeguards for new general top level domain names in respect of geographical indications had been demonstrated. Due to different national systems and policies on the protection of geographical indications around the world along with the different significance of geographical terms in different territories, the Delegation believed that the broader issue of international geographical indication regulation remained unsettled. The Delegation considered that discussing geographical indications in the DNS before finding a common ground on the broader international

geographical indication issues in the material world would be putting the cart before the horse. Finally, the Delegation stressed the imperativeness to hold open, inclusive discussions about geographical indications more generally before narrowing the focus to specific and complex issues.

124. The Delegation of Portugal said that the joint proposal should serve as a basis for the future work of the SCT under this agenda item. The Delegation noted that the issue of protection of geographical Indications and country names in the DNS should require special attention of this Committee in order to find common and appropriate solutions to address the inconsistency with regard to the protection of intellectual property rights in the DNS. The Delegation shared the view that the efficient system under the UDRP should be opened to the holders of geographical indications. The Delegation therefore supported the preparation of a study in the terms of the proposal and the eventual extension of the UDRP to country names and geographical indications.

125. The Delegation of the Republic of Korea concurred with the view that geographical indications should be protected in the DNS. The Delegation, however, had difficulties with the subject matter of that protection. The Delegation wondered whether that protection would be limited only to geographical indications registered under the Lisbon Agreement. Further, the Delegation endorsed the statement by the Delegation of Australia to hold more general discussions on geographical indications before narrowing the focus to specific issues.

126. The Delegation of Jamaica expressed its support for the study outlined in the proposal and looked forward to having further discussion on this issue at the next session of the SCT.

127. The Delegation of Croatia said that the need for protection of geographical indications and country names in the global market did merit the study proposed by the Delegation of Hungary and the co-sponsors.

128. The Representative of ORIGIN, expressing the view on behalf of 400 associations of producers from 40 countries, said that the exclusion of geographical indications from the UDRP was a major problem. The Representative said that several members, both from developing and developed countries, were concerned about the regular use of geographical indications in the DNS. Several cases of registration in bad faith of geographical indications as second level domain names had been spotted in 22 top level domain names currently in use. The Representative stressed the fact that under the current UDRP system there were no means to seek the cancellation of those web sites, often used to sell counterfeited goods and cheat consumers, except if one claimed the right over a trademark. However, to the Delegation's satisfaction, in some country code top level domains, for instance, ".ch", ".it", a legal title recognizing the right over a geographical indication could be submitted as evidence to support the cancellation claim. The Representative further expressed the view that the Internet and the creation of about 1,000 new generic top level domains were emerging challenges, some of them being particularly dangerous for geographical indications. The Representative expressed the hope that the domain ".wine" would not be delegated unless specific safeguards for geographical indications would be ensured. The Representative expressed also the concern that counterfeiting might increase within those domain names and that the transparency and the predictability of the legal system would be at risk. The Representative was of the view that the process of extension of the top level domains had been inconsistent with the international rules. The Representative, recalling that geographical indications were recognized under the TRIPS Agreement, said that the discussion should not focus on the level of protection to be given to geographical indications, but merely on recognizing them as a legal title to support cancellation claims of irregular web sites, used by companies with no link to the specific place of origin, specific country or specific geographical indication. In conclusion, the Representative

expressed its full support for conducting a study and the hope that the study would be the first step towards a thorough, global discussion on the best way to ensure the full protection of geographical indications in the DNS.

129. The Delegation of Hungary thanked the delegations who had expressed their support for the proposal, as well as those that had intervened and shown some level of flexibility. Concerning the comments on the discussion of the scope of protection of geographical indications within the Lisbon Working Group, the Delegation said that that discussion had a different context and that there was no interference with the Lisbon revision process. With regards to the concerns related to the sequence of discussions, namely to have first a discussion on the definition and other legal terms of geographical indications, the Delegation recalled that a large majority of WIPO Member States were also WTO Member States. The Delegation, noting that the development of the Internet was dynamic and things were happening right in that moment, said that members could not wait further years to agree on harmonizing geographical indications on the national level and then to move to the domain names related issues. Further, the Delegation said that the voice of the intellectual property community would be much louder and stronger if the SCT agreed on the common grounds and a reference document aiming at recommending a path to ICANN. The Delegation explained that that was the main reason why it proposed a study within the SCT rather than raising the voice directly in the ICANN GAC. Finally, the Delegation thanked the Representative of ORIGIN for the overview of concerns and interests of the geographical indication community.

130. Reacting to a summary of the discussion made by the Chair, the Delegation of Italy opposed to the possibility of conducting a study covering both proposals put forward under Agenda Item 7.

131. The Delegation of Hungary supported the statement by the Delegation of Italy, adding that it did not support the study proposed by the Delegation of the United States of America.

132. The Delegations of the European Union and Switzerland echoed the statements by the Delegations of Hungary and Italy, noting that those two subjects should be treated separately.

133. The Delegations of El Salvador, Norway and the Russian Federation indicated that they were flexible as to the possible combination of topics proposed for further study, trying to accommodate the interests of all Members States.

134. The Chair noted that some delegations expressed support for the proposal in document SCT/31/7, while other delegations expressed support for the proposal in document SCT/31/8 Rev.2. The Chair also noted that although all delegations that took the floor expressed support for further work, some of them expressly limited their support to conduct such work only on the basis of one specific proposal. Other delegations indicated flexibility as to the possible combination of topics proposed for further study. The Chair concluded that the SCT, at its next session, would explore ways on further work under this item.

#### **AGENDA ITEM 8: ADOPTION OF THE SUMMARY BY THE CHAIR**

135. The Delegation of Indonesia, considering that the proposal by the African Group did not only concern a disclosure requirement, requested that access benefit sharing requirements be mentioned in the Summary by the Chair.

136. The Delegation of the Czech Republic suggested adding a reference to the document SCT/31/2 Rev. with respect to the proposal by the African Group.

137. The Delegation of Iran (Islamic Republic of) declared that it was reasonable to refer to the chapeau to documents SCT/31/2 Rev. and 3 Rev., so as to meet all concerns.

138. The Delegation of the European Union, supporting the Delegation of the Czech Republic, declared that proposals were made on the basis of the existing texts, but the SCT had not discussed these texts.

139. The Delegation of the United Kingdom, recalling that there had been no discussion based on these documents, expressed the view that stating that the two documents were included under Agenda Item 5, but not discussed, would be factual.

140. The Delegation of India, repeating that it had made a comment on Article 6, sought clarification as to the willingness of Group B to refer to documents SCT/31/2 Rev. and 3 Rev..

141. The Delegation of Japan declared that the proposal of Group B was to recommend to the General Assembly to convene a diplomatic conference based on those two specific documents, so that a the reference to the documents was necessary.

142. The Chair stated that there were no discussions on these documents, but only on the proposal by the African Group and that it was a fact that the proposal of Group B was based on documents SCT/31/2 Rev. and 3 Rev.. The proposal by the African Group would be reflected in the text between square brackets and the different views on this proposal would be reflected in footnotes. The Chair finally suggested adding in his Summary that the working documents under Agenda Item 5 were SCT/31/2 Rev. and SCT/31/3 Rev..

143. The Delegation of Kenya agreed to refer to the working documents. It indicated that it had no problem with the suggestion made by the Delegation of Indonesia and confirmed that it had said that the convening of a diplomatic conference still depended on the inclusion of an article on technical assistance in the draft treaty.

144. The Delegation of Iran (Islamic Republic of), expressing its hope that the procedure followed for this Summary by the Chair would be a precedent for other committees, stated that the consensus was not necessary for the Summary by the Chair.

145. The Delegation of Spain said that it understood the difficulty for some delegations to agree on the convening of a diplomatic conference for the adoption of a DLT, as they hoped to obtain progress in other areas. This was a hard negotiation technique which had already been used in other international organizations and other meetings. The Delegation of Spain understood the frustration felt by some delegations in not seeing progress in areas considered by them as a priority. However, the continuation of this negotiation technique implied some risks since it did not create the right atmosphere between delegations, could be counter-productive for pursuing the objective and pushed some delegations, including the Delegation of Spain, to close themselves in their position and to not admit progress in other areas important for other groups. The Delegation expressed the view that accepting a diplomatic conference, based on a text which was ready, would have the effect of improving the atmosphere within WIPO and helping to achieve objectives in all areas of WIPO without exception.

146. The Delegation of the United States of America said that, while it supported the view that the Summary by the Chair was the recollection of the Chair, it would have been important to capture the discussion regarding the Lisbon revision process. Some delegations, including the Delegation of the United States of America, had shared comments both on the process of the Lisbon revision and the subject matter under discussion. The Delegation declared that Geographical Indications was a subject matter shared by both the SCT and the draft new Act of the Lisbon Agreement. Therefore, the Delegation believed that it was necessary to ensure the continuation of a healthy, in-depth and inclusive discussion on Geographical Indications at the

SCT, so that all WIPO Member States could benefit from an understanding of new developments in the area of protection of Geographical Indications. In its opinion, this was particularly important where a small group of WIPO members was on the cusp of a diplomatic conference to agree on a new Lisbon Treaty which would incorporate Geographical Indications, a subject that had broad Intellectual Property and trade implications for all WIPO members. The Delegation expressed the view that, since this subject matter tended to be a point of contention for some, dialogue on Geographical Indications needed to take place in an open, informed and inclusive forum.

147. The Delegation of the Republic of Korea recalled that, along with a significant number of WIPO Member States, it had raised concerns related to the diplomatic conference for the revision of the Lisbon Agreement. Therefore, the Delegation requested that the Summary by the Chair reflect those concerns. Considering that this Committee was the only legitimate forum for the discussions on Geographical Indications, the Delegation expressed the view that the scheduled diplomatic conference could be important for the future framework of the protection of Geographical Indications. The Delegation suggested that the following phrase be included under this Agenda Item: "Some delegations expressed concern that the draft revised Lisbon Agreement for the protection of appellations of origin and their international registration could be concluded at the diplomatic conference in May, 2015, with the restrictive participation of the Member States of WIPO, despite the fact that the title referred to the protection of geographical indications, and requested that the diplomatic conference be opened to all Member States of WIPO".

148. The Delegation of the Czech Republic, speaking on behalf of the CEBS Group, declared that it was necessary to not only mention support for the proposals, but also oppositions. In addition, the Delegation considered that the interventions made by the Delegations of the Republic of Korea and the United States of America were statements, rather than a reflection of the discussions. In its opinion, including statements by several delegations in the Summary by the Chair would not be appropriate.

149. The Delegation of Italy pointed out that the SCT was not the appropriate forum to discuss the revision of the Lisbon System. Therefore, the Delegation considered that the Geographical Indications study requested by the Delegation of the United States of America could not be linked to the work already carried out by the appropriate Working Group on the Lisbon System for the past six years, which had been open to members and observers. All contributions to the discussion had been taken into consideration. The Delegation recalled that the revision process was focused on the revision of an old treaty, so as to better reflect the actual needs and to be more attractive for users and new possible contracting parties. Finally, the Delegation indicated that the revision process was now at its conclusion with the diplomatic conference of 2015, and that the study on Geographical Indications, requested by the Delegation of the United States of America, had nothing to do with it.

150. The Delegation of France believed that it was inappropriate to link the SCT work with the work of the Lisbon Working Group. In its view, the work done by the Lisbon Working Group could not be challenged or questioned.

151. The Delegation of the European Union, speaking on behalf of the European Union, indicated that the SCT was not the appropriate forum to discuss matters relating to the Lisbon System and its revision, the Delegation declared that this was a matter for the Lisbon Union and the upcoming diplomatic conference.

152. The Delegation of Hungary stated that, although there had been support for both proposals under this Agenda Item, concerns had also been expressed, which should also be reflected in the Summary. In addition, the Delegation of Hungary indicated that the SCT was not the forum to intervene on the outcome of a working group established by an independent WIPO-administered treaty.

153. The Delegation of Chile, recalling that it had supported both proposed studies said that it saw merits in each of them, as contributions to the understanding of the issues relating to Geographical Indications. The Delegation however pointed out that its interest, although connected with the revision of the Lisbon Agreement, went beyond that because the subjects had implications for Members and non-members of the Lisbon Union. In its view, the SCT was the appropriate and mandated forum to deal, at the international level and in a participatory way, with all matters and implications related to Geographical Indications. The Delegation therefore lent its support to the statement made by the Delegation of the United States of America.

154. The Delegation of Australia aligned itself with the statements made by the Delegation of the United States of America in respect to the Lisbon Agreement and the coverage of Geographical Indications at WIPO. Echoing the statement made by the Delegation of Chile, the Delegation of Australia stated that it supported the discussion of Geographical Indications within the SCT, which constituted the appropriate forum in WIPO to discuss this subject matter. The Delegation did not agree that, since Geographical Indications were being discussed by a smaller subset of members in the Lisbon Union, they could not be discussed by the broader membership of WIPO in the SCT.

155. The Chair, observing that under this Agenda Item, there were divisions and splits, suggested leaving the text of the Summary as it stood and announced that the opinion expressed by all delegations concerning the Summary would be noted in the report. The Chair then said that the Summary by the Chair on Agenda Item 7 was adopted.

156. The Delegation of the European Union expressed the extreme disappointment of the European Union and its member states with the outcome of the session of the SCT. The Delegation observed that the SCT had made no progress and had even taken a step back. Discussions on the technical aspects of DLT, assumed by everyone to be complete, had been blown open by the amendment tabled by the African Group. The Delegation announced that the European Union and its member states needed to reflect on the wider implications of the proposal by the African Group and consider how this impacted their ability to convene a diplomatic conference under these changed circumstances with this new text. Furthermore, the Delegation felt the need to reflect on the consequences this would have on the flexibility shown in the past by the European Union and its member states in relation to technical assistance, as the basic objectives would no longer be met. The Delegation, expressing the view that some broader issues were at stake, underlined the fact that the Organization had always attempted to strike a balance between the interests of all stakeholders and facilitate agreement on issues where common interest bound all members. In its view, by introducing its amendment on disclosure requirement in the framework of DLT, the African Group had broken the unwritten covenant which had provided a framework for constructive dialogue in this Organization. The Delegation of the European Union therefore urged once again the African Group to reconsider its position in the light of this statement and hoped that good sense would prevail, so as to allow the SCT to, at least, move back to where it stood at the beginning of the week in relation to the possibility of convening a diplomatic conference on DLT.

157. The Delegation of Kenya stated that the African Group had always been very constructive and had always engaged in good faith. The African Group made it clear that it had the right to come back to the text at any time and to make proposals from the beginning of the process until

the last session and even during the diplomatic conference. In its opinion, it was clear that nothing was agreed until everything was agreed, until the adoption of the final act. The Delegation was surprised by the fact that the proposal of the African Group based on its core interests was considered as breaking a covenant and unwritten rule. The disclosure requirement being an essential element in respect to the protection of traditional designs, the Delegation explained that traditional designs had been misused, misappropriated and registered by individuals not owning them, depriving communities where they originated from a benefit. The Delegation of Kenya believed that the Organization should work for both developed and developing countries, respecting each other's interests. Pointing out that the African Group was not a passenger in the Organization, the Delegation underlined the need to be treated equally and to respect each other.

158. The Delegation of the Czech Republic, speaking on behalf of the CEBS Group, observed that the SCT was confronted with a clear attempt by the African Group to move backwards and away from a success on an important normative issue. In its opinion, this was a signal for the SCT that the substance was trumped by linkages and attempts to politicize the work. The Delegation invited the African Group to take into account the wider implications of these actions when reconsidering its proposal. The Delegation, reminding the SCT of the efforts and time spent on the DLT, believed that taking the SCT backwards was not in line with avoiding wasting time.

159. The Delegation of Japan indicated that Group B came to the SCT with a constructive spirit and a recommendation to the conference based on the texts. The Delegation regretted that no progress had been made and that the SCT had rather moved backwards. Confirming that every Member State had a right to make a proposal at any time, the Delegation stressed the fact that, at the same time, each exercise had objectives. In its view, so as to let the Organization work properly, the SCT needed to consider each subject on its merit without linking all and deviating from shared objectives. From that perspective, the Delegation said that it still believed that the SCT members could work as one towards the unchanged objective of the Organization.

160. The Delegation of Pakistan, on behalf of the Asian and Pacific Group, said that it had participated in these discussions in a constructive manner and that it believed that the SCT needed to pay equal attention to developing capacity of States in order to achieve tangible results. The Delegation expressed its hope to see progress on all issues reflecting the different needs and priorities of all States in an inclusive manner in future sessions.

161. The Delegation of China expressed its interest in the improvement of the discussions of the SCT. Reiterating that the work of the SCT was very important for developing countries as well as developed countries in the Organization, the Delegation said that it hoped that all parties would demonstrate more flexibility to find consensus instead of showing oppositions. Finally, the Delegation, recalling that every delegation had the responsibility to contribute to the work of WIPO, expressed its readiness to work with all on the substantial issues of the Organization.

162. The SCT approved the Summary by the Chair as presented in document SCT/32/5.

## **AGENDA ITEM 9: CLOSING OF THE SESSION**

163. The Chair closed the session on November 26, 2014.

[Annexes follow]



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SCT/32/5  
ORIGINAL: ENGLISH  
DATE: NOVEMBER 26, 2014

## **Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications**

**Thirty-Second Session  
Geneva, November 24 to 26, 2014**

### **SUMMARY BY THE CHAIR**

*adopted by the Committee*

#### **AGENDA ITEM 1: OPENING OF THE SESSION**

1. The Chair of the SCT opened the thirty-second session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), welcomed the participants and invited Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), to make opening remarks.
2. Mr. Marcus Höpferger (WIPO) acted as Secretary to the SCT.

#### **AGENDA ITEM 2: ADOPTION OF THE AGENDA**

3. The SCT adopted the draft Agenda (document SCT/32/1 Prov.3).

#### **AGENDA ITEM 3: ACCREDITATION OF A NON-GOVERNMENTAL ORGANIZATION**

4. The SCT approved the representation of the Bureau of European Design Associations (BEDA) in sessions of the Committee.

#### **AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-FIRST SESSION**

5. The SCT adopted the draft report of the thirty-first session (document SCT/31/10 Prov.).

#### **AGENDA ITEM 5: INDUSTRIAL DESIGNS**

6. The working documents under this item were SCT/31/2 Rev. and SCT/31/3 Rev.
7. The Delegation of Kenya, on behalf of the African Group, presented a proposal for a new item (ix) on disclosure requirement to be included in Article 3(1)(a) of the draft Design Law Treaty as contained in document SCT/31/2 Rev.
8. The Delegation of Japan, on behalf of Group B, presented a proposal for a decision by the SCT to recommend to the WIPO General Assembly to convene a diplomatic conference for the Adoption of a Design Law Treaty in 2015, based on documents SCT/31/2 Rev. and 3 Rev.
9. The Chair concluded that the proposal of the African Group would be included into the revised version of the document between square brackets and that the different views on that proposal would be reflected in footnotes. Some delegations expressed concern with the timing and substance and indicated that they now have to reconsider their position on the process following these new developments. Some delegations stated that the convening of a diplomatic conference still depended on the inclusion into the draft Treaty of an Article on Technical Assistance and Capacity Building.

#### **AGENDA ITEM 6: TRADEMARKS**

##### *Revised Proposal by the Delegation of Jamaica*

- 10: Discussions were based on document SCT/32/2.
11. Some delegations expressed support for the continuation of discussions on this item, while others expressed concerns.
12. The Chair requested the Secretariat to organize a side event to the next session of the SCT, which would offer background on various aspects of the protection of country names and nation branding. Following this side event, the SCT would revert to the item under consideration.

##### *Update on Trademark-Related Aspects of the Domain Name System*

13. Discussions were based on document SCT/32/3.
14. The SCT took note of document SCT/32/3 and the Secretariat was requested to keep Member States informed on future developments in the Domain Name System.

#### **AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS**

15. Discussions were based on documents SCT/31/7 and SCT/31/8 Rev.2.

16. Some delegations expressed support for the proposal in document SCT/31/7. Other delegations expressed support for the proposal in document SCT/31/8 Rev.2. Although all delegations that took the floor expressed support for further work, some of them expressly limited their support to conduct such work only on the basis of one specific proposal. Other delegations indicated flexibility as to the possible combination of topics proposed for further study.

17. The Chair concluded that the SCT, at its next session, would explore ways on further work under this item.

#### **AGENDA ITEM 8: SUMMARY BY THE CHAIR**

18. The SCT approved the Summary by the Chair as contained in the present document.

#### **AGENDA ITEM 9: CLOSING OF THE SESSION**

19. The Chair closed the session on November 26, 2014.

[Annex II follows]



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SCT/32/INF/1  
ORIGINAL: FRANCAIS/ANGLAIS  
DATE: 26 NOVEMBRE 2014 / NOVEMBER 26, 2014

## **Comité permanent du droit des marques, des dessins et modèles industriels et des indications géographiques**

**Trente-deuxième session  
Genève, 24 – 26 novembre 2014**

## **Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications**

**Thirty-Second Session  
Geneva, November 24 to 26, 2014**

**LISTE DES PARTICIPANTS  
LIST OF PARTICIPANTS**

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prepared by the Secretariat*

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

II. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/  
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\* Sur une décision du Comité permanent, les Communautés européennes ont obtenu le statut de membre sans droit de vote.

\* Based on a decision of the Standing Committee, the European Communities were accorded member status without a right to vote.

III. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/  
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MARQUES (Association européenne des propriétaires de marques de commerce)/MARQUES  
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Secrétaire/Secretary: Marcus HÖPPERGER (OMPI/WIPO)

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