

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

Thirty-Fifth Session
Geneva, April 25 to 27, 2016

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-fifth session, in Geneva, from April 25 to 27, 2016.
2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Albania, Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Bahamas, Belarus, Bosnia and Herzegovina, Brazil, Cambodia, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Cuba, Czech Republic, Denmark, Democratic People’s Republic of Korea, Egypt, El Salvador, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iraq, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Latvia, Lebanon, Libya, Lithuania, Mali, Malta, Mauritania, Mexico, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Nepal, Netherlands, Nigeria, Norway, Pakistan, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, Uruguay, United Arab Emirates, United Kingdom, United States of America, Zambia, Zimbabwe (95). The European Union was represented in its

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

capacity as a special member of the SCT. Palestine was represented in its capacity as Observer.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), African Union (AU), South Centre (SC), World Trade Organization (WTO) (4).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: Association des Industries de marque (AIM), Association française des praticiens du droit des marques et modèles (APRAM), Centre for International Intellectual Property Studies (CEIPI), China Trademark Association (CTA), European Law Student's Association (ELSA International), Health and Environment Program (HEP), International Association for the Protection of Intellectual Property (AIPPI), International Center for Trade and Sustainable Development (ICTSD), International Wine Law Association (AIDV), International Federation of Intellectual Property Attorneys (FICPI), 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, Organization for an International Geographical Indications Network (oriGIn) (16).

5. The list of participants is contained in Annex II of this document.

6. The Secretariat noted the interventions made and recorded them.

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the thirty-fifth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.

8. Mr. Marcus Höpferger (WIPO) acted as Secretary to the SCT.

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

9. Mr. Adil El Maliki (Morocco) was elected Chair. Mr. Imre Gonda (Hungary) and Mr. Alfredo Carlos Rendón Algara (Mexico) were elected Vice-Chairs of the Committee.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

10. The SCT adopted the draft Agenda (document SCT/35/1 Prov.).

AGENDA ITEM 4: ADOPTION OF THE REVISED DRAFT REPORT OF THE THIRTY-FOURTH SESSION

11. The SCT adopted the revised draft Report of the thirty-fourth session (document SCT/34/8 Prov.2).

General Statements

12. The Delegation of Bahamas, speaking on behalf of the Group of Latin American and

Caribbean States (GRULAC), was confident that consensus could be reached at the current session on the outstanding issues related to the text of the basic proposal for the Design Law Treaty (DLT), in compliance with the mandate received from the General Assembly, so that a Preparatory Committee could be convened. The Group reiterated that effective technical assistance and strengthening of national capacities remained a vital concern of the Latin American and Caribbean region, made up of developing countries. Therefore, the Group supported the inclusion in the Treaty of provisions concerning technical assistance, regardless of their nature. The Group considered that the protection of country names was a very important issue that provided States with a valuable opportunity to design nation branding schemes that brought value through the use of trademarks, especially for developing countries. However, the Group noted that there was a lack of internationally-consistent protection of country names, as it had been confirmed during the twenty-ninth session of the SCT and in the Study prepared by the Secretariat to determine possible best practices for the protection of country names against registration as trademarks or elements of trademarks. In response to the invitation made at the thirtieth session of the SCT, member delegations had submitted written proposals to the Secretariat and a draft Joint Recommendation regarding the protection of country names against registration and use of trademarks had been presented at the thirty-first session of the SCT, and a revised version thereof presented to the thirty-second session. The Group believed that this Joint Recommendation could guide Member States in the examination of trademark applications consisting of or containing country names and would help to promote a coherent and comprehensive treatment of this issue. Therefore, the Group supported continued discussions on the protection of country names. In addition, and pursuant to the General Assembly decision, the Group looked forward to discussing and examining the different systems of protection of geographical indications within the current mandate of the SCT and covering all aspects of the issue.

13. The Delegation of Nigeria, speaking on behalf of the African Group, recognized the particular significance of the thirty-fifth session of the SCT towards the conclusion of a draft DLT. The Group underlined its commitment to fulfilling the decisions of the General Assembly and noted that a Preparatory Committee was scheduled to take place on April 28 and 29, 2016. The Delegation noted that the African Group's understanding of the decision by the General Assembly was that a diplomatic conference for the adoption of the DLT could be convened only if the discussions on technical assistance and disclosure had been completed during the thirty-fourth and thirty-fifth sessions of the SCT and that the text of the basic proposal of the DLT would be finalized by the SCT during those sessions. The Group considered that the Committee needed to reach consensus on the pending issues before taking further steps. It would therefore be incumbent on all Member States participating in the SCT to work towards completing discussions on the key pending issues of the DLT. The African Group believed that no Member State could consciously seek to convene a diplomatic conference without having the confidence of an expected success. In recent sessions of the SCT, and in particular during the thirty-fourth session, the African Group responded with several written and visual samples to questions about the rationale and merits of including a disclosure element in Article 3 of the draft DLT. The Group wished to hear the rationale for the continued resistance of those delegations that opposed the inclusion of a disclosure requirement in the draft DLT, which was a valid and verifiable interest of a remarkable number of WIPO's membership. The Group believed that a better appreciation of issues that had different levels of priority in the diverse membership of the SCT could only yield positive results for the Committee. As it had been stated during the 2015 General Assembly, the African Group appreciated the exponential growth of industrial designs and their role in the intellectual property ecosystem. The Group believed that the proposed DLT should balance the needs of its intended signatories, including the preservation of national policy space for the protection of industrial designs and a provision on technical assistance and capacity building to cater for the needs of the intellectual property frameworks of developing and least developed countries. The African Group was ready to engage constructively on other equally important aspects of the Committee's work related to trademarks and geographical indications. The Group took note of the proposal on industrial

designs presented by the Delegations of the United States of America and Japan and contained in document SCT/35/6. The Group awaited the presentation of that proposal before providing further comments.

14. The Delegation of Latvia, speaking on behalf of the Group of Central European and Baltic States (CEBS Group), attached great importance to the adoption of the DLT. The CEBS Group considered that the most important task of the session was achieving the work mandated through a General Assembly decision, namely removing any remaining obstacles for the convening of the diplomatic conference. In this regard, the Group urged all WIPO Member States to approach those remaining issues with an open mind and with full commitment to holding the diplomatic conference. The DLT had been mature for several years, and it was thus high-time to complete the discussions on the outstanding issues. The CEBS Group was also ready to engage in a pragmatic manner in the discussions of other important questions of the agenda, namely on the protection of country names and geographical indications.

15. The Delegation of Greece, speaking on behalf of Group B, noted that the current session of the SCT was the second consecutive meeting after the successful conclusion of the WIPO forty-seventh General Assemblies, which directed the SCT to finalize the text of the basic proposal of the DLT and to examine the different systems of protection of geographical indications, covering all aspects of these issues, while remaining within the Committee's current mandate. Given the direction provided by the General Assembly decision and the proposed time frame, Group B expected that with regard to the convening of a diplomatic conference for the adoption of the DLT, priority would be given to technical assistance and the proposed text on disclosure. The Group would welcome a pragmatic outcome of the discussions on the disclosure requirement, in order to achieve the already agreed objective of simplifying registration procedures for designs. Group B considered that the clear objective of the DLT was the simplification of procedures for applicants in multiple jurisdictions, thus facilitating international trade and investment. Concerning the other remaining issue of technical assistance, the Group reiterated that WIPO had been successfully delivering technical assistance and would continue to do so within its mandate, irrespective of whether or not a provision was included in a treaty. Concerning the issue of geographical indications, Group B looked forward to a constructive discussion and reiterated the commitment of Group B delegations to having a constructive and supportive spirit during the session.

16. The Delegation of India, speaking on behalf of the Asia-Pacific Group, expressed the view that intellectual property had gained significant importance in the current interconnected and interdependent world. A contemporary intellectual property regime provided the bedrock for innovation, which was crucial to building the economy and helping the development of any country. At the same time, a robust intellectual property ecosystem needed to be sensitive and conscious of the diverse developmental needs of the Member States. The normative work of the Committee should not lose focus on maintaining that crucial balance between the interests of the right holders and the larger public good. The SCT was working towards bridging the position gaps among the Member States on the text of a possible DLT, whose implementation should be accompanied with the enhanced capacity of member countries to carry out their new obligations. To realistically achieve the desired outcome, the proposed Treaty should include adequate provisions for building capacity within the intellectual property infrastructure of developing countries and LDCs. The Asia-Pacific Group therefore reiterated its strong support to the provision on technical assistance in the proposed DLT through an article to be included in the main body of the text, so as to suitably reflect the importance of the issue. The Group called for a decision on the matter through consensus at the current session, which would satisfy all Member States. Most of the members of the Asia-Pacific Group supported the principle of disclosure of source that had an impact on the appearance of the industrial design. As sovereign Member States of WIPO, countries should have the flexibility to include as part of the design eligibility criteria, elements that were considered important to complete the formalities for protection of industrial designs within their jurisdiction. The Group welcomed the direction that

the last WIPO General Assembly had given in relation to the DLT, and expressed its readiness to engage with other groups towards finding a constructive and complete resolution of the outstanding issues, which would enable the SCT to convene a diplomatic conference within the prescribed time frame. In addition, the Group stated that there was a need for international action to prevent the undue registration or use of country names as trademarks and generally supported the proposal made by the Delegation of Jamaica for the development and future adoption of a Joint Recommendation on country names. The Group supported the proposal made by the Delegation of the United States of America to develop a survey on existing national geographical indications regimes to enhance the understanding of the commonalities and different approaches to the protection of geographical indications that have been adopted by various Member States. The Group hoped to see progress towards consensus on the issue of the protection of country names and geographical indications. In addition, the report of the Secretariat relating to trademarks in the Domain Name System (DNS) provided very useful information about various services and procedures available to trademark owners to prevent bad faith registration or use of domain names. However, the Asia-Pacific Group requested the Secretariat to provide a more detailed report about the specific tools and mechanisms deployed, if any, to facilitate affordable access and use of such services by users from developing and least developed countries. The Delegation indicated that some members of the Group had different national positions on the issue of disclosure and would make their own statements in that regard. Finally, the Group reminded all the Members of the Committee that it was essential for the SCT to resolve all issues in a consensual manner before the Preparatory Committee, in order to ensure optimum results.

17. The Delegation of China said that the present session of the SCT was of key importance for the timely convening of a diplomatic conference in 2017. The delegations and the Secretariat had made a great deal of effort that had provided initial results. The Delegation hoped that additional efforts by all parties would further advance the process and allow the SCT to reach substantive progress on the key issues of technical assistance and disclosure of source, so as to create the necessary conditions for the convening of a diplomatic conference. At the same time, the Delegation called upon all relevant parties to demonstrate greater flexibility and fully understand and respect each other's aspirations to render the DLT more flexible and more inclusive. The Delegation hoped that the article on reservations would have adequate provisions to bridge the differences and eliminate legal and technical obstacles to the acceptance of the proposed DLT. In that manner, the proposed DLT would enjoy wider acceptance and have a greater influence. With regard to trademarks and geographical indications, the Delegation would take an active and constructive approach during the respective discussions.

18. The Delegation of the European Union, speaking on behalf of the European Union and its member states, recalled that during the previous session of the SCT and as mandated by the General Assembly, the discussions in relation to the DLT were focused on two remaining issues. During the current session, the SCT should concentrate on reaching a common understanding on those issues, as that would enable the Committee to move forward to the Preparatory Committee that was scheduled for two days following the SCT session and then on to the diplomatic conference. In relation to country names and geographical indications, the Delegation looked forward to holding constructive discussions. The Delegation indicated its interest in conducting a study on geographical indications in the DNS, as this would fall within the scope of the decision by the General Assembly to examine the different systems for the protection of geographical indications within its current mandate and covering all aspects.

19. The Delegation of Sri Lanka aligned itself with the statement made by the Delegation of India on behalf of the Asia-Pacific Group. As the SCT had the mandate to discuss the international development of the law of trademarks, industrial designs and geographical indications, including the harmonization of national laws and procedures, the Delegation believed that a balanced outcome of the Committee was vital to ensure that all countries

benefited from its work. In an increasingly interconnected and interdependent world, it was essential that the contemporary intellectual property system should be responsive to the diversity of needs and the development of all Member States. In that context, while acknowledging the need for timely international action to prevent the undue registration or use of country names as trademarks, the Delegation supported the proposal made by the Delegation of Jamaica for the development and future adoption of a Joint Recommendation (document SCT/32/2) and hoped that the Committee would work constructively with all Members to find a balanced approach to address the issue. While the Delegation took note of the progress made in the discussions regarding the draft DLT, it highlighted that further work was still needed to reflect in the text of the Treaty the different levels of development of the Member States. The Delegation believed that the implementation of the proposed Treaty required augmented capacity of the States to carry out their obligations. In this regard, the Delegation considered that adequate capacity building provisions to meet the obligations of the draft Treaty would contribute to realistically achieve its desired outcome. The Delegation also noted the progress made by the Committee on the discussions relating to geographical indications, as well as the efforts made to enhance the understanding of the commonalities and different approaches adopted by various Member States on the protection of geographical indications. In Sri Lanka, the Intellectual Property Act No. 36 of 2003 aimed at facilitating the registration of geographical indications and safeguarding the interests of producers and exporters of Ceylon Tea and Ceylon Cinnamon. Sri Lanka recognized the importance of intellectual property as a tool for technological advancement and as socio-economic development. Sri Lanka was currently in the process of integrating intellectual property into its national policy formulation, with special emphasis on innovation, science and technology, as well as creativity, to promote economic development and empowerment through the implementation of a 10 Point Action Plan in cooperation with WIPO. The plan had come into force in 2014 following the visit of Francis Gurry, Director General of WIPO to Sri Lanka in November 2013. The Delegation wished to place on record its sincere appreciation of the valuable cooperation extended by WIPO in developing and supporting the implementation of the Action Plan, which could serve as a model to countries that were similar to Sri Lanka. A coordination mechanism had been created in 2015 to implement the Action Plan, a National Steering Committee on Intellectual Property (SCIP) had been convened in July 2015, and since then, there was a frequent exchange of views between the SCIP and WIPO officials through video conferences that were held every two months to assess the progress in implementation of the 10 Point Action Plan. The Delegation thanked the Director General for his continued support and the cooperation extended to Sri Lanka in its intellectual property related activities, and expected that such cooperation would continue. The Delegation looked forward to fruitful deliberations during the session, to which it would contribute with a constructive spirit.

20. The Delegation of Oman supported the statement made by the Delegation of India on behalf of the Asia-Pacific Group. With regard to geographical indications, the Delegation believed that the Committee had a role to play in facilitating an agreement among Member States. Concerning the DLT project, the Delegation called on all Members to hold discussions on capacity building, in order to enable developing countries to face the challenges of implementing the Treaty and making full use of it. Oman believed in the importance of the disclosure of origin requirement, which had an impact on the details to be provided with the application, but sufficient flexibility was necessary in designing the form of disclosure. The Delegation welcomed the guidance provided by the General Assembly during its forty-seventh session and said it would actively participate in order to reach a constructive decision that would allow the SCT to recommend the convening of a diplomatic conference during the identified dates. Regarding trademarks, the Delegation considered that there was a dire need for international action to face the unlawful use of country names in trademarks and believed that an agreement on this matter could be reached. Concerning geographical indications, the Delegation believed that priority should be given to finding a balanced approach that would be compatible with the mandate of both the Organization and the Standing Committee.

21. The Delegation of Trinidad and Tobago supported the statement made by the Delegation

of Bahamas on behalf of GRULAC and said that the discussions on the proposed DLT were of particular interest to it, as Trinidad and Tobago had agreed in principle to accede to the Hague Agreement. The issue of the protection of country names was also of particular importance, especially to countries in the Caribbean region, as each country possessed its own distinctive identity with respect to culture, food, traditions and even sports. That unique identity provided an opportunity for country branding, which in turn would increase international trade and export markets for Caribbean countries. As Trinidad and Tobago sought to diversify its economy, discussions on the protection of country names were of particular importance and therefore, the delegation supported the efforts deployed by the Delegation of Jamaica. The Domain Name System (DNS) raised a number of challenges for intellectual property protection, due to the global nature of the Internet, for example, the bad-faith registration and use of domain names corresponding to trademark rights. Therefore, an international approach to addressing the issue was particularly important, as was also significant to explore effective measures against misuse of geographical indications and other important geographical names in the operations of DNS, especially in relation to local products such as the Trinidad and Tobago cocoa which had international reputation of being a premium cocoa used to make some of the world's finest chocolates. In 2016, eleven varieties of cocoa were in the process of registration under the new Plant Variety Act of Trinidad and Tobago.

22. The Delegation of Iran (Islamic Republic of) associated itself with the statement made by the Delegation of India on behalf of the Asia-Pacific Group. The Delegation considered that it was important to establish a balance between the costs and benefits of concluding the proposed DLT, also taking into consideration the different levels of development among countries. It was highly important that developing countries and LDCs received appropriate technical assistance and capacity building in order to advance their capacity in the area of industrial designs so that they become capable of implementing their obligations under the proposed DLT, and are empowered to effectively participate and benefit from it. Thus, the inclusion of provisions on technical assistance and capacity building in the main body of the proposed treaty would ensure certainty, predictability and strike a balance between rights and obligations in the draft text. The Delegation reiterated that technical assistance and capacity building should be part of the DLT, in the form of a legally binding provision, so as to pave the way for developing countries and LDCs to make effective use of the treaty and facilitate their accession. In addition, the Delegation supported the inclusion of the disclosure requirement in Article 3 of the DLT and stated that such a requirement was merely a procedural formality. The Delegation pointed out that there were still some outstanding issues in the DLT that needed to be resolved before convening a diplomatic conference. The Delegation believed that in particular, divergences relating to technical assistance and capacity building for developing and least-developed countries, and the inclusion of the disclosure requirement should be successfully settled in accordance with the 2015 General Assembly mandate. The General Assembly had agreed that the text of the basic proposal of the DLT should be finalized by the SCT at its thirty-fourth and thirty-fifth sessions, with a view to convening a diplomatic conference for the adoption of the DLT in the first half of 2017. The Delegation held the view that those issues should be resolved before taking a decision to convene a diplomatic conference in 2017.

23. The Delegation of the Republic of Korea supported the statement made by the Delegation of India on behalf of Asia-Pacific Group and said that the DLT would be a precious tool for design creators around the world, as the Treaty could benefit not only large enterprises but also small and medium-sized companies and individuals in developing and least-developed countries, since its objective was to simplify design application and registration procedures. Recalling the decision of the last WIPO General Assembly, the Delegation considered that the SCT should focus on finalizing the text of the basic proposal for the DLT during the current session, so that a diplomatic conference for the adoption of the DLT could be convened at the end of the first half of 2017. In addition, the Delegation believed that the disclosure requirement in design applications for subject matter based on traditional knowledge, traditional cultural expressions or genetic resources would not be appropriate in the process of harmonizing

formalities, considering that disclosure was a substantive requirement which would affect the registrability of a design rather than a formality and therefore, fell outside of the scope of the DLT. The Delegation was concerned by the fact that inserting the disclosure requirement in the DLT would place an undue burden on applicants of industrial design rights. The Delegation hoped that the meeting could be used as a platform to facilitate the holding of the diplomatic conference and bring those long ongoing discussions to a fruitful conclusion. With regard to the protection of country names, the Delegation considered that document SCT/35/4 would provide the Committee with valuable information on the matter and stated that trademarks containing country names should be protected if current users of marks legitimately used the country names and the trademarks had even become well-known or acquired recognition in the domestic market. The Delegation fully supported the proposals made by the Delegation of the United States of America and contained in documents SCT/30/7, SCT/31/7 and SCT/34/5. Considering the limitation in the recently adopted new Act of the Lisbon Agreement which did not take into account all the various national geographical indication regimes that were implemented by the Member States, the Delegation deemed necessary to conduct a further study on geographical indications and to carefully review the feasibility of an international geographical indications filing system under the SCT. The Republic of Korea expressed its full commitment to the success of the session.

24. The Representative of INTA noted that although the word trademark was prominent in the name of the organization, it went beyond addressing only trademark rights and as part of its current strategic plan had established a number of new Committees to properly reflect its work. One of those Committees was the Designs Committee, which included 50 members from all continents, representing a wide variety of views on designs and design patents across the globe. The Design Committee developed and advocated the association's policy positions relating to designs. Design rights were therefore included in the association's work and INTA was proud to support design rights owners and the practitioners that represented them. INTA had long been a proponent of international harmonization in relation to intellectual property rights. Harmonization of filing and registration procedures made it easier for right owners to protect their rights. This was particularly important for individual designers and small to medium-sized enterprises where the absence of harmonization in design filing practices increased costs and acted as a barrier to intellectual property protection. For example, concerning the drawings to represent a design, an individual designer faced multiple problems and significant costs attempting to obtain registration for design protection around the world. Harmonizing and simplifying the requirements for design registration would benefit design owners and users of the various national and regional systems, as well as the authorities who administered those systems. Rapid technological advancements made the harmonization significantly more urgent. Three-dimensional printing technology was now readily available and in many places it was domestically affordable. As the risk of infringement rose, so did the need for protection. INTA supported the significant efforts made by WIPO Members to date for moving towards simplified filing procedures that would help create more efficient, more rapid and more cost-effective protection for designs. Such a harmonized system would also mean less of a likelihood that the designers would lose their rights through inadvertent disclosure or for missing or misunderstanding complicated filing requirements in different jurisdictions. INTA believed that resolving the remaining issues was within reach and appealed to the Member States to complete their discussions on those issues so that in the interest of designers, government authorities and other stakeholders, a diplomatic conference could be convened to finalize and adopt the proposed DLT.

25. The Representative of HEP affirmed that its members expected the SCT would take into account all the registration procedures around the world and on this understanding, supported the provision on disclosure. The Representative was firmly in favor of convening a diplomatic conference within the deadline set by the General Assembly.

AGENDA ITEM 5: INDUSTRIAL DESIGNS

Industrial Design Law and Practice – Draft Articles and Draft Regulations

26. The Chair suggested to focus the discussion on the proposal on a disclosure requirement, as reflected in Article 3(1)(a)(ix) of document SCT/35/2, and the question of technical assistance and capacity building, as reflected in [Article 22][Resolution] of the same document.

27. The Representative of CEIPI recalled that, at the previous session of the SCT, the Delegation of Mozambique had drawn the attention of the Committee to the fact that the draft DLT did not contain a provision similar to Article 2(2) of the Patent Law Treaty (PLT). This lacuna was however now filled by the introduction of Article 1 *bis* in the draft DLT. Considering that the disclosure requirement was a matter of substantive law, more specifically a matter concerning the right to the design, the Representative said that he disagreed with the view that item (ix) dealt with a mere formality that needed to be included in Article 3(1)(a). In his view, such reasoning would lead to an inconsistency, as the absence of such a provision in the PLT had not prevented some contracting parties to that treaty from providing for a disclosure requirement in their national legislation, which proved that, in the field of patent law, such requirement was a matter of substantive law. In the Representative's view, what related to substantive law in patent law could likewise only relate to substantive law in design law. Reiterating his conviction that omitting item (ix) from Article 3(1)(a) would not prevent any party from introducing or maintaining a disclosure requirement in its national or regional legislation, the Representative said that he regarded Article 1 *bis* as the beginning of a compromise. The Representative suggested complementing that Article with a note or, if a note was not considered to be sufficient, an agreed statement by the diplomatic conference. To conclude, the Representative expressed the hope that an acceptable compromise would be attained.

28. The Delegation of Greece, speaking on behalf of Group B, referred to the recent expansion of the Hague System to highlight the increasing importance of industrial designs. The Delegation indicated that the proposed treaty would be beneficial for users of the intellectual property system, as it would harmonize and simplify procedures for applicants in multiple jurisdictions, facilitating international trade and investment. The Delegation wondered how a disclosure requirement concerning genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs) could fit within the objective of the DLT to simplify design formalities, insofar as the content of a design was a substantive issue not addressed by the DLT. Expressing the view that the version of the draft DLT presented to the thirty-first session of the SCT provided sufficient flexibility for Member States, the Delegation said that a clear distinction should be made between, on the one hand, the patent system and the discussions on a disclosure requirement in patent applications and, on the other hand, the industrial design system. While acknowledging that Member States could make proposals at any time, the Delegation declared that Group B regretted that the proposed language for a disclosure requirement, which was dissimilar to the rest of Article 3, had been presented at a late juncture, after the emergence of a consensus on the article's text and purpose. Reiterating the view that Article 3(1)(a)(ix) did not contribute to the objective of the treaty or serve the purpose stated by its proponents, the Delegation said that Group B appealed to the proponents to reconsider their proposal. In conclusion, Group B hoped that a focused negotiation environment would be restored and that SCT members would find a satisfactory solution in order to complete the discussions on technical assistance and capacity building and on a disclosure requirement, as mandated by the WIPO General Assembly.

29. The Delegation of Latvia, speaking on behalf of the CEBS Group, said that the DLT was a procedural treaty not addressing substantive issues, aimed at facilitating access to the protection of industrial designs by harmonizing and simplifying the required formalities for registration. The Delegation recalled that the treaty would be beneficial to users as it would offer them predictability at national and international levels. Observing that the proposal made

by the African Group was a substantial requirement, the Delegation expressed the view that the current provisions of the draft treaty and regulations offered the necessary policy space for Member States to adopt provisions according to their national needs. The Delegation concluded by expressing its readiness to engage in constructive discussions to find a mutually acceptable compromise.

30. The Delegation of Saudi Arabia appealed to the Committee to move speedily and make progress in a positive manner on the two pending issues. Inviting Member States to demonstrate openness in order to reach consensus, the Delegation expressed the view that the text on the disclosure requirement, as proposed by the African Group, could be maintained in the draft DLT, as it would enable Member States to have more flexibility.

31. The Delegation of Nigeria, speaking on behalf of the African Group, declared that the African Group was not in a position to withdraw the proposed inclusion of item (ix) in Article 3(1)(a). Wondering about the reasons why some delegations opposed to the proposal, the Delegation recalled that the African Group had provided explanations at the previous session of the SCT and was ready to provide further clarification if sought by SCT members. The Delegation pointed out that, for the African Group and other SCT members supporting the proposal, the latter dealt with a question of eligibility. Observing that neither the draft basic proposal nor the working methods of the Organization prevented a Member State from making a proposal even before a diplomatic conference, the Delegation stated that it disagreed with the view that a consensus had been reached before the proposed inclusion of item (ix) in Article 3(1)(a) put forward by the African Group.

32. The Delegation of Colombia, recalling the importance of facilitating the access to protection to designers who were the principal beneficiaries of the DLT, considered that it was not desirable to include norms that were not part of the substantive unity of the treaty. While recognizing that, in the field of patents, the origin of a genetic resource or of a TK could be disclosed, the Delegation wondered how genetic resources, traditional knowledge or expressions of folklore could concern industrial designs. Expressing the view that a provision in this area could even be prejudicial to indigenous populations, the Delegation reported that, in its jurisdiction, an attempt to use industrial property to protect expressions of folklore had been made. The Delegation declared that, although it was not sure of the relevance of the proposed provision, it remained open to hear further explanations on the proposal.

33. The Delegation of Iran (Islamic Republic of), lending its support to the statement made by the Delegation of Nigeria on behalf of the African Group, said that Member States were entitled to make proposals at any time, even during the diplomatic conference. The Delegation declared that it was in favor of the inclusion of a disclosure requirement in Article 3, as it viewed such requirement as a mere formality, insofar as the disclosed information would not be examined. The Delegation expressed the wish to reach a consensus on this issue before the preparatory committee.

34. The Delegation of the European Union, on behalf of the European Union and its member states, expressed the view that the main body of the draft DLT had been stabilized for some time. Welcoming the opportunity to discuss the two remaining issues as mandated by the WIPO General Assembly, the Delegation considered that resolving them was an essential step to move to the preparatory committee. Recalling that the purpose of the DLT was the alignment and simplification of design registration, the Delegation remained unconvinced that the proposal on a disclosure requirement, as included in Article 3 of the DLT, was relevant for industrial designs, which protected the appearance of a product. In its view, a disclosure requirement was linked to the patent system. The Delegation pointed out that the question of a disclosure requirement had been addressed in the first meeting of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) in February 2016, where fruitful and open substantive discussions had been held in order to gain

understanding of the different issues on the table. The Delegation looked forward to continuing the discussions at the next IGC session in May 2016, underlining the fact that the European Union and its member states had contributed constructively to those discussions with a significant proposal on a patent disclosure requirement for GRs and, pending further discussions, for TK associated with GRs. The Delegation stated that, from its viewpoint, the IGC was the appropriate forum to discuss the underlying substantive issues in relation to disclosure requirement.

35. The Delegation of Mexico, expressing its support for the statement made by the Delegation of Colombia, reported that, in its jurisdiction, the protection of industrial designs was working properly and, consequently, the number of national registrations had increased. In its view, providing for an additional requirement would entail a setback in the use of the intellectual property right.

36. The Delegation of Switzerland, expressing its support for the statement made by the Delegation of Greece on behalf of Group B, said that it also endorsed the key statement made by the Representative of CEIPI. The Delegation expressed the view that a disclosure requirement was not a formality, but a matter of substantive law. While it acknowledged the importance of the requirement, for which provision was made in its national patent law, the Delegation stressed the fact that the requirement did not have a place in the field of designs, where only the appearance mattered. Declaring that it agreed with Article 1 *bis*, as proposed by the Chair, the Delegation pointed out that the inclusion in the DLT of that provision would be a good compromise and would allow the African Group to withdraw its proposal.

37. The Delegation of Canada, reaffirming its support for the normative work of the SCT on the development of the DLT, expressed the opinion that the text of the treaty had already reached a sufficient level of maturity prior to the thirty-second session of the SCT in November 2014. The Delegation recalled that, at that time, it had been willing to work constructively with other Member States to reach a decision for a recommendation for a diplomatic conference. Since then, a new provision had been proposed by the African Group, which created the possibility of new substantive requirements for applicants and, therefore, went against the goal of the DLT, aiming at minimizing administrative requirements related to industrial design applications. Regretting the recent addition of a new language on a disclosure requirement in industrial design applications under the DLT, the Delegation held the view that adding such requirement to the DLT was not appropriate in the context of negotiations aiming at harmonizing formalities, as this would create the possibility of a new substantive obligation. Concurring with the statements made by the Delegations of Greece, on behalf of Group B, and of the European Union, as well as with the statement by the Representative of CEIPI, the Delegation stated its flexibility and openness to continue working in collaboration with other Member States to achieve a positive outcome.

38. The Delegation of Japan, expressing its support for the statement made by the Delegation of Greece on behalf of Group B, stated that the proposed item (ix) of Article 3(1)(a) was not necessary as it provided for a substantive requirement that did not fit into the objective of the DLT. Observing that the concern of the African Group was now addressed by Article 1 *bis*, as proposed by the Chair at the previous session of the SCT, the Delegation announced its willingness to continue the discussion on this item in a constructive manner.

39. The Delegation of the Republic of Korea, recalling that the objective of the DLT was to simplify design application procedures, said that the Committee should focus on said simplification. From the Delegation's viewpoint, the disclosure requirement constituted a substantive requirement - rather than a formality - that would affect the registrability of a design.

Consequently, the inclusion of such a requirement in the DLT would not be appropriate in the framework of harmonizing formalities. Finally, the Delegation endorsed the views expressed by the Delegation of the European Union that this issue should be discussed at the IGC.

40. The Delegation of China, while aligning itself in principle with the proposal made by the African Group, stated that it could show flexibility on the issue. Considering that the proposal related to an optional provision and that Article 3(2) of the DLT prohibited other requirements than those referred to in Article 3(1) and in Article 10, the Delegation expressed the hope that SCT members could consider the addition of the proposed provision, so as to enable countries wishing to introduce this requirement in their laws to do so.

41. The Delegation of Nigeria, speaking in its national capacity, aligned itself with the statements made by the African Group and the Delegations of China and Iran (Islamic Republic of). As proposals reflected the national interests of creators, the Delegation said that it was not correct to describe a proposal put forward by any country in an intergovernmental forum as inappropriate. The Delegation also considered that asking for the withdrawal of a proposal was disrespectful of the national sovereignty and the responsibility of sovereign States to ensure that their creators' interests were represented in a forum. Pointing out that the proposed disclosure requirement would not change the nature or spirit of the draft DLT, since it strove to preserve existing policy space at the national level, the Delegation said that requiring the indication of the source of a design was part of ascertaining its novelty or originality. Furthermore, the Delegation considered that every formalities treaty had substantive implications and that some provisions of the draft DLT, for example Article 9, had substantive effects. Finally, the Delegation expressed its openness and interest in maintaining constructive and helpful conversations to move forward and achieve consensus.

42. The Representative of AIPPI said that, in his view, the inclusion of the proposed disclosure requirement in Article 3 of the DLT would add a layer of uncertainty, cost, administration and complexity. Whereas a design right protected the overall appearance of a design and did not extend to any of its particular parts, the proposed provision seemed to extract elements, as it required the disclosure of the origin of the components of a design. Observing that the word "traditional" could be substituted by the word "old", as something traditional implied pre-existence, the Representative pointed out that identifying portions of a design, which were traditional or old, would be an issue. In addition, the terms TCEs and TK were vague and would need to be defined to enable applicants to know what should be disclosed to satisfy the requirement.

43. The Delegation of Mozambique, lending its support to the statement made by the Delegation of Nigeria, on behalf of the African Group, supported by the Delegations of China, India and Iran (Islamic Republic of), recognized that the goal of the DLT was to minimize requirements to be fulfilled by an applicant to obtain protection, and thus to facilitate protection for designs globally. As applicants would not need to be familiar with different laws in order to obtain protection, more applications would be filed around the world, including in developing and least-developed countries. If a registered design included a TCE, local communities and indigenous groups would have to fight within more jurisdictions at great expenses. The Delegation, seconding the statement by the Delegation of Nigeria, also considered that some provisions of the DLT seemed more substantive than formal and could hamper identification and redress of misappropriation in the design context. The Delegation referred to Articles 6, 13 and 17 of the DLT, as well as to the Rule allowing the use of dotted lines to indicate non-claimed subject matter, which in its view contained requirements with substantive effects. In light of those substantive provisions, which could negatively impact least-developed and developing countries, the Delegation believed that the proposal by the African Group for policy space seemed consistent with the protection necessary for local designers to facilitate determining whether their designs had been misappropriated.

44. The Delegation of Indonesia stated that a middle ground solution should be found, as it considered that there was a space for discussion between Article 1 *bis*, proposed by the Chair, and the African Group's proposal. The Delegation informed the Committee that, in the framework of the revision of the design law in Indonesia, the implementation of a compulsory disclosure requirement for TCEs was currently being discussed at national level. Stressing the lack of connection between the IGC and the DLT, the Delegation stated that those issues would need to be discussed separately. While understanding the difficulty to define TK, TCEs or GRs or folklore, the Delegation said that it was convinced that the African Group's proposal was of a procedural nature. The Delegation concluded by saying that, in its jurisdiction, procedural and substantive elements were connected to each other.

45. The Delegation of Colombia suggested modifying the wording of Article 3(1)(a)(ix), so as to provide for a declaration in which the applicant would state that his/her design was new and that he/she was at the origin of the design. From the Delegation's viewpoint, such wording would be in line with Article 1 *bis*, as proposed by the Chair, and would be applicable where the national law so required.

46. The Delegation of the United Kingdom, aligning itself with the Delegation of Greece, on behalf of Group B, said that the proponents of the proposal had failed to convince Member States that item (ix) of Article 3(1)(a) was a crucial element of the DLT. The Delegation observed that some of the key questions raised at the previous session by members of Group B remained unanswered or partially responded. As, in its opinion, the DLT would not take away the freedom of Member States to legislate in their jurisdictions, the Delegation wondered which provisions of the treaty would limit policy space. Finally, the Delegation expressed the wish to find a reasonable middle ground solution.

47. The Delegation of Costa Rica lent its support to the statements made by the Delegations of Colombia and Mexico.

48. The Delegation of the Republic of Moldova, pointing out that the disclosure requirement proposed in Article 3 was a substantial requirement, stated that SCT members should focus their attention in applicants, who needed to easily obtain protection for their designs in many countries using the same application and documents.

49. The Delegation of Hungary, thanking the Delegations of Mozambique, Nigeria and South Africa for the explanations provided at the thirty-fourth session of the SCT, said that, as per the discussions concerning the implementation of a disclosure requirement held at the thirty-fourth session of the SCT, only South Africa had implemented such disclosure requirement in its national legislation. The Delegation asked whether the situation had changed.

50. The Delegation of Nigeria, on behalf of the African Group, stated that neither the African Group nor any country had to persuade Member States about the legitimacy of a preferred policy principle. Reiterating the support of the African Group for Article 1 *bis*, the Delegation believed that SCT members should work together so as to bridge the gap between the interests of the African Group and the opponents' interests. Recalling that the Swakopmund Protocol had entered into force in May 2015 and that six countries had ratified it at that time, the Delegation explained that member states of ARIPO were now beginning to experience the processing of applications implementing the provision in question. Referring to Article 3(1)(a), the Delegation observed that not every contracting party would implement in its law all of the indications or elements listed in that provision, so that some degree of disharmony would still remain. Finally, the Delegation came to the conclusion that the idea was to facilitate and simplify the process to obtain international protection for designs which were not based on the misappropriation or use of other people's knowledge.

51. The Delegation of Greece, speaking in its national capacity, aligned itself with the statements made by the European Union and by Group B. Although some countries considered that a disclosure requirement was required to assess whether a design was eligible for registration, the Delegation reiterated that it failed to see how such a substantive requirement would fit in a formalities treaty. The fact that a provision had substantive implications did not mean that elements other than formal ones could be introduced in the text of the DLT. The Delegation was persuaded that the DLT did not prevent a party to introduce a disclosure requirement provision in its national legislation.

52. The Chair noted the fruitful discussions held on the question of a disclosure requirement and opened the floor to delegations on the question of technical assistance.

53. The Delegation of Brazil reiterated its position that technical assistance should be a legally binding provision of the DLT in the form of an article, since an article provided legal certainty and predictability for the parties. Observing that an article was in line with the spirit of the Development Agenda, considering in particular Recommendations 1, 12 and 15, the Delegation pointed out that Article 51 of the Patent Cooperation Treaty had had positive effects regarding technical assistance for developing countries.

54. The Delegation of Latvia, speaking on behalf of the CEBS Group, reiterated the Group's long standing flexible position on the manner in which technical assistance delivery would be incorporated into the DLT. Inviting Member States to show a maximum flexibility in finding a solution, since no delegation objected to the principle to include technical assistance in the future treaty, the CEBS Group suggested moving to the diplomatic conference to discuss and agree on the modalities of such assistance.

55. The Delegation of the European Union, speaking on behalf of the European Union and its member states, stated that it remained flexible with respect to the form of the technical assistance provision. Underlining its support for the effective delivery of technical assistance in implementing the DLT, the Delegation considered that whichever form was agreed should be geared to the requirements of end-users.

56. The Delegation of Nigeria, speaking on behalf of the African Group, endorsed the statement made by the Delegation of Brazil.

57. The Delegation of the Russian Federation stated that it remained flexible on technical assistance and its status. The Delegation believed that the text of the provision was ready for a diplomatic conference and that the decision on holding a diplomatic conference should not be based on whether or not an agreement on the status of this provision had been reached.

58. The Delegation of Iran (Islamic Republic of) associated itself with the statement made by the Delegations of Brazil and Nigeria, on behalf of the African Group, to include technical assistance and capacity building in the main body of the proposed draft DLT, in order to ensure legal certainty and predictability.

59. The Delegation of Canada stated that it remained supportive of a commitment on technical assistance and capacity building in relation to the DLT. The Delegation was confident that a diplomatic conference resolution on technical assistance would provide sufficiently clear commitment regarding the provision of technical assistance and capacity building measures in the context of the DLT. However, the Delegation reiterated its flexibility in terms of whether this provision should be an article or a resolution, as long as an agreement on an article would not be a precondition to proceed to a diplomatic conference.

60. The Delegation of Greece, speaking on behalf of Group B, reiterated the view that WIPO had been successfully delivering technical assistance and would continue to do so within its mandate, irrespective of a provision in the DLT.
61. The Delegation of Bahamas, speaking on behalf of GRULAC, said that the majority of the GRULAC member states considered that effective technical assistance and the strengthening of national capacities remained of vital concern to them, regardless of the nature of the provision.
62. The Delegation of China stated that it remained flexible, although it preferred an article.
63. The Delegation of Japan, aligning itself with the statement made by the Delegation of Greece, on behalf of Group B, stated that it fully understood the importance of technical assistance and capacity building in developing and least developed countries in the field of intellectual property. The Delegation indicated that the Government of Japan had been financing a number of activities based on the voluntary contribution under the funds in trust arrangement with WIPO for almost 30 years, including in the field of industrial designs. Those activities had been carried out taking into account individual needs and requests of the recipient countries and had been well received by stakeholders in those countries. Based on that experience, the Delegation was of the view that a resolution was mostly suitable for setting forth the subject of technical assistance and capacity building, as those activities, by their nature, should be broadly implemented in a flexible manner, based on the evolving needs of recipient countries.
64. The Chair, noting that most delegations were in favor of the provision of technical assistance, pointed out that there were two approaches regarding its nature. A group of countries was in favor of an article on technical assistance, while other delegations had expressed their preference for a resolution. The Chair also underlined the positive spirit of the discussions and the wish expressed by the delegations to attempt to make progress on this issue. In that context, the Chair proposed to further discuss the issue in informal consultations.
65. The Chair resumed the work of the Committee after the informal consultations, informing the Committee that a Chair non-paper on Article 3 had been presented to delegations.
66. The Delegation of India, speaking on behalf of the Asia-Pacific Group, declared that, although the Group saw merits in the proposal, some members of the Group had reservations on the language, which could further be discussed in the framework of informal consultations. The Delegation, highlighting the crucial nature of the final day of the thirty-fifth session of the SCT, expressed the wish of the Asia-Pacific Group to play an important role in the process and conveyed the Group's flexibility and willingness to engage constructively with the other delegations.
67. The Delegation of Bahamas, speaking on behalf of GRULAC, reported that, although some members of GRULAC had raised particular concerns, the Group wished to move forward with the discussions and negotiate in a constructive manner.
68. The Delegation of Nigeria, speaking on behalf of the African Group, indicated that the Group had had a positive look at the Chair non-paper, but needed to further discuss the proposal.
69. The Delegation of Greece, speaking on behalf of Group B, said that the Group had held discussions on the Chair non-paper and would revert to the SCT with its comments.
70. The Delegation of Latvia, speaking on behalf of the CEBS Group, announced that the CEBS Group wished to elaborate on the comments to the Chair non-paper, and reiterated its commitment to engage in a constructive manner.

71. The Delegation of China, holding the view that progress had been made with regards to the Chair's proposal, stated that it would also take an active and constructive approach in the future negotiations.
72. The Delegation of Moldova, supporting the Chair's proposal, expressed its willingness to work hard with a view to finalize the document and send it to the diplomatic conference.
73. The Delegation of the Republic of Korea, while raising concerns about the inclusion of the discussed provision which would go against the harmonization nature of the treaty, requested more time to consult with its capital.
74. The Chair, expressing its gratitude to all delegations for their commitment to work in a constructive manner, said that he felt confident that the SCT would be able to overcome the difficulties. He recalled that the Treaty would not prevent any country from considering industrial designs in its own way and from looking at the substance and the subject matter in different manners, as this was the case with the PLT and the TLT. The Chair proposed to continue the discussion in informal consultations.
75. The Chair, resuming the work after the informal consultations, reported that a Chair non-paper containing a draft new Article 3(2)(b), as well as a draft agreed statement, had been discussed during the informals. The Chair observed that almost all delegations had agreed with the principle reflected in the proposed draft Article 3(2)(b), subject to some further work. Nevertheless, some delegations had expressed the wish to discuss that provision together with the agreed statement while others had not approved the draft agreed statement. As there was still a major gap between the delegations' viewpoints on this issue, the Chair informed the Committee that he had drafted another Chair non-paper on Article 1*bis*, renumbered Article 2, aiming at leaving policy space to contracting parties. The Chair reported that the latter non-paper had also been discussed during the informal consultations. He added that, while some delegations had seen a solution in the proposal related to Article 2, some others had required more time to consider it.
76. The Delegation of Bahamas, speaking on behalf of GRULAC, expressed its support to the proposal made by the Chair in relation to draft Article 2.
77. The Delegation of Nigeria, speaking on behalf of the African Group, expressed its preference for the initial proposal of the Chair on Article 3 as a basis for discussions.
78. The Delegation of India, speaking on behalf of the Asia -Pacific Group, informed the Committee that it agreed with the proposal of the Chair on Article 2. With regard to Article 3, most of the members of the Group could go along with the Chair non-paper. The Delegation invited other delegations to show flexibility in the spirit of multilateralism.
79. The Delegation of Latvia, speaking on behalf of the CEBS Group, stated that it was still trying to understand the concerns of the African Group, as, in its view, they were already addressed in the text. In the spirit of flexibility and so as to reach the objective of a diplomatic conference, the Delegation declared that it considered the proposal of the Chair on Article 2 in a positive manner.
80. The Delegation of China, expressing its openness, said that it could go along with the Chair non-paper and the initial proposal.
81. The Delegation of Greece, speaking on behalf of Group B, said that it considered the proposal of the Chair in a positive manner.

82. The Chair noted that no delegation opposed to draft Article 2. As it seemed difficult to go further with draft Article 3, the Chair proposed to continue the informal consultations on Article 2.

83. The Chair resumed the work of the SCT after the informal discussions. He informed the Committee that he had prepared a Chair non-paper on Articles 2 and 3, aiming at accommodating all delegations, since, in his view, this was the last chance of complying with the mandate given by the WIPO General Assembly.

84. The Delegation of Bahamas, speaking on behalf of GRULAC, announced that GRULAC was willing to work with the Chair's proposal at the diplomatic conference and, consequently, wished to move forward to the preparatory committee.

85. The Delegation of China, expressing its appreciation for the efforts of the Chair, declared that, in principle, it could go along with the text proposed by the Chair and appealed to other delegations to show flexibility.

86. The Delegation of India, speaking on behalf of the Asia-Pacific Group, reported that no consensus among the Group members had been reached on the proposed text, although the Group felt that some elements from Articles 2 and 3 could constitute a good basis for further negotiations.

87. The Delegation of Greece, speaking on behalf of Group B, declared that Group B welcomed the proposal by the Chair, subject to the deletion of Note 3.08. The proposed text, except Note 3.08, was considered as a path forward to a diplomatic conference, where the language could be further elaborated and finalized.

88. The Delegation of Latvia, speaking on behalf of the CEBS Group, declared that the CEBS Group welcomed the latest proposal by the Chair and could work on the whole text, with the exception of Note 3.08, in a diplomatic conference.

89. The Delegation of Nigeria, speaking on behalf of the African Group, reported that no consensus had been reached among the African Group with regard to the latest text proposed by the Chair. The African Group held the view that, while some elements should not be included in the text, some others were not reflected. Stressing the fact that more work was needed, the Delegation stated that the African Group felt that the text was not in a stage to go to a diplomatic conference.

90. The Delegation of Spain, supported by the Delegation of Colombia and Hungary, sought clarification as to the parts of the latest proposal by the Chair which created difficulties for the African Group.

91. The Delegation of the European Union, speaking on behalf of the European Union and its member states, expressing its great flexibility to explore alternative options and further opportunities for consensus, stated that the text proposed by the Chair was a good basis.

92. The Representative of AIPPI recalled that, worldwide, users were waiting for an agreement, as a treaty such as the DLT would affect real people and real rights. If the proposed text still raised issues, the Representative announced its readiness to assist to try to find a solution.

93. The Delegation of Iran (Islamic Republic of) expressed its support for the statement made by the Delegation of India on behalf of the Asia-Pacific Group. The Delegation expressed its readiness to work on the positive elements of the proposal or, as an alternative, to focus on the previous one. The Delegation declared that it looked forward to finalizing the text and continuing work within the framework of the preparatory committee of the diplomatic conference.

94. The Chair, noting that the discussion focused mainly on language issues in his non-paper, requested the SCT to advise him how to finalize the text.

95. The Delegation of Spain, reiterating the question to the African Group on which elements of the proposal were difficult for it to accept, stated that the mandate of the WIPO General Assembly had been for the SCT to finalize the work, not to reach an agreement. The Delegation considered that the Committee had finalized its work, as mandated by the WIPO General Assembly, in spite of the absence of an agreement, and believed that it would be for the WIPO General Assembly to ultimately decide whether the SCT had finalized the work. Therefore, the Delegation believed that the text of the Chair non-paper could be included in the document, within brackets.

96. The Delegation of Indonesia suggested that each opposing party to the Chair's proposal be given the possibility to state the reasons of such an opposition.

97. The Chair asked the Committee whether it agreed to present the text as it stood to the preparatory committee and let the WIPO General Assembly decide whether the SCT had completed its work on it.

98. The Delegation of Chile, aligning itself with the statement made by the Delegation of Spain, declared that, in its view, the SCT had fulfilled its mandate and all the delegations had done their utmost in exploring every possibility to reach an agreement.

99. The Delegation of the United States of America lent its support to the interventions made by Group B, the European Union and its member states, and other delegations with respect to the text proposed by the Chair, subject to the deletion of Note 3.08. The Delegation believed, however, that, in spite of the delegations' engagement, the brackets around the language that had not obtained consensus did not solve the problem.

100. The Chair noted the proposal to delete Note 3.08 and asked whether there were any other proposals.

101. The Delegation of Nigeria, speaking on behalf of the African Group, said that there was no convergence on a fundamental question, recalling that Group B had requested to remove from the text the reference to expressions of traditions, whereas the African Group wanted to see the disclosure of source or origin of traditional knowledge, traditional cultural expressions and genetic resources used or incorporated in industrial designs. The Delegation expressed its readiness to engage constructively, but wondered whether those two divergent views could be reconciled.

102. The Chair, recalling his various proposals on Articles 3 and 1 *bis*, said that he had tried to find language that would make everyone comfortable. He reminded the Committee that the mandate of the WIPO General Assembly was just to finalize the text of a basic proposal.

103. The Delegation of Colombia reaffirmed its flexibility with regard to the text and expressed its readiness to discuss further in a diplomatic conference. The Delegation aligned itself with the statement made by the Delegation of Spain, echoed by the Delegation of Chile.

104. The Delegation of the European Union, speaking on behalf of the European Union and its member states, reaffirmed that the European Union was one of the main proponents of the DLT. The Delegation said that it was prepared to carry on the discussions late into the night if required and see whether the delegations could bridge the differences. Indicating that the text was solid, the Delegation expressed its regret to see that it had fallen at the last hurdle. The Delegation expressed its readiness to continue the discussion and hoped that a success would crown the efforts of the Chair.

105. The Delegation of Greece, speaking on behalf of Group B, reiterated its firm position that the text of the DLT was mature enough and agreed to present the text to the diplomatic conference for further elaboration.

106. The Chair thanked all delegations for their efforts at trying to find a way to finalize the basic proposal for the draft DLT, as requested by the WIPO General Assembly of WIPO, with the aim to convene a diplomatic conference. He recalled that he had offered a number of suggestions on the basis of discussions held in Plenary and in informal meetings in order to reach a consensus. A certain number of delegations had expressed the view that the work carried out had enabled the Committee to finalize the basic proposal for a DLT. Other delegations believed that the work had led to a basic document, but there were still some elements that required further elaboration. Other delegations had expressed the view that the text had not been sufficiently completed to form the basis for a proposal for a DLT, as requested by the General Assembly.

107. The Delegation of Spain pointed out that, in its understanding, the Committee could not decide whether or not it had completed its work, since that decision belonged to the WIPO General Assembly.

108. The Chair recalled that his role was to report on all the points of view expressed within the Committee when there was not a consensus. Therefore, since different views had been expressed on the fact that the work of the SCT had been achieved or not, he wished to reflect those views in his Summary, in the interest of transparency.

109. The Chair noted that the SCT had been working throughout the session with the objective to finalize the basic proposal for the DLT as requested by the WIPO General Assembly decision, with a view to convene a diplomatic conference for the adoption of a DLT at the end of the first half of 2017. To that end, the Chair has presented a number of suggestions to the SCT.

110. The Chair concluded that a number of delegations were of the opinion that the work of the SCT was sufficient to consider that the basic proposal was finalized. Other delegations considered that the work of the SCT constituted a sufficient ground for finalizing the basic proposal and that a few elements needed further work. Other delegations considered that the work of the SCT was not sufficient to finalize the basic proposal.

Proposal by the Delegations of the United States of America and Japan as contained in document SCT/35/6

111. Discussion was based on document SCT/35/6.

112. The Delegation of the United States of America, thanking the Delegation of Japan for its contribution to document SCT/35/6, recalled that for many years, industrial design had focused on traditional physical wares. However, the prevalence and importance of new technology and emerging designs related to user interfaces, icons, and other electronic goods had driven design into new areas. Those new designs were not only among the most prevalent in the United States of America, but in many other jurisdictions across the globe. For the last few years, those classes of designs had been the most commonly filed design applications at the USPTO and that number continued to grow. Similar observations had been heard across the globe. The Delegation considered that the SCT was the appropriate WIPO Committee for discussion of those industrial design issues. The Delegation considered that the time was right for the Committee to discuss new technological designs, taking the opportunity to study those designs before jurisdictions which had developed long-standing and entrenched positions on those quickly evolving technologies. The Delegation believed that the topic held great promise

to applicants and design offices across the globe, observing that document SCT/35/6 reflected some examples on which topics were contemplated for discussion. To conclude, the Delegation said that it looked forward to discussing and exploring what the current practice was on those topics in each jurisdiction.

113. The Delegation of Israel, expressing support for the proposal made by the Delegations of the United States of America and Japan in document SCT/35/6, declared that it joined those Delegations as co-sponsor of the proposal. The Delegation observed that the issues raised in the proposal were very relevant for Israel and that some were included in the context of a bill for a new designs law which was currently pending in the Parliament of Israel. The Delegation informed the Committee that the current design statute in Israel was based on the United Kingdom design law from 1919 and that the new bill was largely derived from the current United Kingdom and European Union design law. The Delegation added that in the course of preparing the bill and in the parliamentary hearings to date, one of the most heated debates between private practitioners, academics, judges and government officials in Israel revolved around the question of whether or not the digital products, such as graphic user interfaces, were eligible for design protection under current law of Israel. The Delegation explained that under the proposed bill, graphic user interfaces (GUI) would be design subject matter, eligible for protection of design, provided that all the criteria were met. In addition, the bill would specify that digital graphics, typefaces and fonts would also be design subject matter. Under current law, the Delegation indicated that there were claims where it was not clear whether digital type graphic typefaces were design subject matter or copyright subject matter. The Minister of Justice of Israel, who is in charge of Intellectual Property legislation had always maintained the position that electronic or digital products could and should be protected like any other tangible product, that is to say as a design. The Delegation did not believe that the change brought on by technology should change the substance of the law and maintained the position that even the design ordinance could and should be interpreted as applying to digital designs. The system of Israel would also prevent overlapping copyright protection for such digital products, as for any other product, on the reasoning that an industrial design protection regime would provide both adequate protection and promote competition and creation of new digital products. In light of its experience, the Delegation concurred with the Delegation of the United States of America that the time was right to conduct the suggested research and declared that it wanted to join the proposal as cosponsors. In addition, the Delegation suggested that the research also take into account the protection of digital type graphic typefaces or fonts.

114. The Delegation of Japan, thanking the Delegation of the United States of America for its explanations, welcomed the Delegation of Israel as co-sponsor of the proposal contained in document SCT/35/6. The Delegation observed that, while the creation of new and emerging technological designs, including designs for graphic images such as GUI and icons, had spread with the rapid advance of information and communication technology in recent years, there was not sufficient information on how protection was provided for such designs in jurisdictions around the world. Consequently, gathering information in this respect would be beneficial for users of Member States, including Japan. Stressing the importance of conducting a survey at the SCT for the purpose of collecting such information and sharing it among Member States and users, the Delegation had made this joint proposal with the Delegations of the United States of America and Israel. The Delegation explained that, in Japan, graphic images had been subject of protection under the national law since April 2007. Nevertheless, before April 1, 2016, the scope of protection had been limited to graphic images used for enabling the article to function and previously recorded with the article, such as digital cameras and graphic images of software. The Delegation indicated that the new examination guidelines for designs had been amended and applied, since April 1, 2016, to designs containing graphic images. In addition to graphic images that had been previously recorded with the article, the images of an application software that were afterward installed and recorded on computers, such as smartphones and tablet computers, also became subject of protection as part of the configuration of appearance of the article.

115. The Delegation of Australia expressed its interest in learning about the considerations of other members concerning the protection of virtual and non-physical designs. The Delegation stated that Australia was currently evaluating its own policies for the protection of virtual or nonphysical designs, adding that such evaluation was part of a broader review of the design system and not solely in relation or in response to concerns over protection for virtual or nonphysical designs. The Delegation also pointed out that a recent independent review of its design system recommended that the treatment of virtual or nonphysical designs be reconsidered, for example by allowing consideration of the product in its active and not just its resting state when considering validity. The Delegation said that it would be happy to provide information on the approaches of its current system for protecting those types of designs, pointing out that it did not yet know the position of its government in regard to the future policy. In conclusion, the Delegation stressed the usefulness of an exchange of information on the topic.

116. The Delegations of Canada, Chile, Colombia, France, Hungary, Mexico, Spain and the European Union, on behalf of the European Union and its member states thanked the Delegations of the United States of America, Japan, and Israel for the joint proposal and expressed their support for a discussion and an exchange of opinions on those topics at the next session of the SCT.

117. The Delegation of the Russian Federation, stating that it was very interested in those new areas of industrial designs, expressed its wish to provide information on the Russian experience.

118. The Chair noted that a number of delegations had responded positively to the joint proposal contained in document SCT/35/6 and had expressed the wish to include this topic on the agenda of the SCT. Certain delegations also expressed their desire to share their experience and their concerns.

119. The Chair requested the Secretariat to prepare a questionnaire, based on document SCT/35/6, to be addressed to all Member States of WIPO. He further requested the Secretariat to prepare a document containing replies to that questionnaire, to be presented at the next session of the SCT.

WIPO Digital Access Service (DAS)

120. The Delegation of the United States of America expressed interest in hearing information on the WIPO Digital Access Service (DAS). The Delegation recalled that the service, utilized in the patent context, was ready to be used in the industrial design context. Furthermore, the Hague Working Group had inserted language in the Regulations and Administrative Instructions, paving the way for the WIPO DAS System to be used. However, in spite of all that, the service was not yet utilized in the industrial design context. Thus, the Delegation requested the Secretariat to present information on the DAS at the next session of the SCT.

121. The Chair took note of the request submitted by the Delegation of the United States of America.

AGENDA ITEM 6: TRADEMARKS*Trademarks**Protection of Country Names Against Registration and Use as Trademarks: Practices, Approaches and Possible Areas of Convergence and Revised Proposal by the Delegation of Jamaica*

122. The Delegation of Jamaica recalled that in 2009, it had proposed an amendment of Article 6^{ter} of the Paris Convention in order to improve the protection to country names, in a manner similar to the existing provision concerning State symbols, flags, etc. However, recognizing that the time was not ripe for such an amendment and after constructive consultations with several Member States, the Delegation proposed an alternative, asking the Secretariat to prepare a study. The Delegation noted that developing countries, which had certain vulnerabilities relied on branding to provide weak and vulnerable users with strong branding campaigns. Highly industrialized and middle income countries had been able to enter global commerce with appropriate branding and marketing campaigns and therefore, the Delegation sought measures to strengthen the ability of SMEs in small developing countries to enter and effectively participate in global commerce where they could benefit from the recognition and market appeal provided by a collectively managed and well promoted national brand which required the effective protection of country names in order to be successful. The capacity of large enterprises, especially those in developed countries, to brand and market their products and services might not suffer from such problems as did enterprises in small and vulnerable economies. That was the reason why the Delegation sought a solution through the discussions in the Committee. The Delegation had analyzed document SCT/29/5, which confirmed that although in theory, protection was available for country names, under certain circumstances, there was an opportunity for persons and entities to nevertheless abuse and unfairly free ride on the good will and reputation of a country's name. In practice, the protection that theoretically existed for country names was not comprehensive, inadequate and often insufficient. All the countries that responded to the previous study had indicated that their legislation provided protection to names of States only if they were considered as descriptive of the region where the goods were produced. This was the most commonly used ground to refuse trademark applications. However, the situation was different where the mark consisted exclusively of the country name than when it included additional words or figurative elements. In practice, trademarks which comprised or contained country names were often accepted for registration where the country name was combined with other elements which rendered the trademark distinctive as a whole. Numerous examples were presented during the side event to the thirty-third session of the SCT. In fact, in the vast majority of WIPO Member States, all an applicant had to do to trademark a country name was to stylize the name or add words or other elements to overcome the basic protection offered in theory to country names. This current state of affairs was clearly evidenced by examples of trademarks including country names that were found on the trademark register of several States. The side event to the thirty-third session and document SCT/35/4 confirmed the need for a comprehensive and internationally-consistent protection of country names. The aim of the proposed draft Joint Recommendation was not to prescribe rules to be followed but establish a coherent and consistent framework to guide intellectual property offices in the use of trademarks and identifiers consisting of or containing country names. The Delegation found document SCT/35/4 to be very useful as it outlined possible areas of convergence. However, in its opinion, the document could benefit from empirical data regarding the trademark practice and interpretation of Member States, so as to identify possible areas of convergence and divergence. The Member State survey that had been carried out in previous years was not precise enough, as it showed that in theory many countries protected country names under the rubric of false or misleading trademarks, but there were many exceptions or interpretations which permitted the registration of country names as trademarks although the applicant had no connection to the country named in the trademark. Therefore, the Delegation requested that

the convergence document prepared by the Secretariat be revised to incorporate a new survey with expanded questions to gather more practical information from States. Additional questions or issues could include, for example, what circumstances amounted to misleading, deceptive or false trademarks and who was allowed to file oppositions to trademark applications including country names. Thus, the Delegation proposed that the Secretariat conduct another survey among Member States on experiences with country name applications and look at the gaps between the law and practice on the protection of country names. The Delegation also requested the SCT to agree on a deadline for suggestions or questions to be included in a new survey and said that it remained ready and willing to work with all Member States and the Secretariat in order to find solutions for the effective protection of country names.

123. The Delegation of Switzerland supported the statement made by the Delegation of Jamaica and its revised proposal contained in document SCT/32/2. The Delegation believed that document SCT/35/4 showed that convergence could be envisaged on a number of principles regarding the protection of country names. Area of convergence number 3 of the document suggested there was a possible convergence around not-registering a mark if the use of a country name was misleading, deceptive or false in relation to the origin of the goods or services. This possible area of convergence would apply in the national law of most countries. However, in document WIPO/Strad/INF/7, the notion of deceptiveness appeared to be vague and different from one country to another. Although document SCT/35/4 presented the principles of protection, the content of the areas of convergence was insufficient to ensure coherent and specific protection to country names. The Delegation called for non-binding guidelines at the international level and held the view that a study of the reasons behind the divergent practices would enable the SCT to move the debate forward. In addition, a questionnaire should be prepared concerning the factors to be considered when determining the deceptive, false or misleading use of country names.

124. The Delegation of the European Union, speaking on behalf of the European Union and its member states, took note of document SCT/35/4, which confirmed several opportunities were available to third-parties before, during, and after the trademark registration process at which the protection of country names might be invoked. The Delegation suggested to focus on awareness-raising activities about the available mechanisms to obtain the refusal or invalidation of trademarks containing country names. There were several grounds to refuse or invalidate trademarks, namely the lack of any distinctiveness, descriptive character and the fact that trademarks were contrary to public policy, misleading, deceptive or false. The Delegation renewed its interest in the proposal contained in document SCT/34/2 to address the protection of country names in examination manuals, in order to raise awareness of the already existing possibilities to refuse or invalidate the registration as a trademark of signs consisting of or containing country names. With respect to the possible areas of convergence found among the laws and practices of different Members, the Delegation said it was not opposed to continue work in those areas, but believed that areas of a substantive nature such as areas number 3 and 4, should be outside the scope the work, since it would be difficult to achieve progress on them.

125. The Delegation of Latvia, speaking on behalf of the CEBS Group appreciated the overview of the status of protection of country names. Document SCT/35/4 showed different approaches that were adopted by the Member States regarding the registration of country names as trademarks and contained information on ways to oppose such registration. The Delegation took note of the possible areas of convergence that were identified in the document and looked forward to constructive and positive discussions on the way forward.

126. The Delegation of Monaco expressed support for any initiative designed to advance the work of the Committee on the issue of country names, and in particular regarding the possibility of harmonizing national practices in this area. For more than fifteen years, national authorities in Monaco had been trying to protect the names of Monaco and Monte Carlo around the world.

The Delegation noticed that the protection of country names was neither uniform nor exhaustive, it required considerable human and extraordinary financial resources although it did not always help local operators or consumers to ensure such protection. For that reason, the Delegation supported the statements made by the Delegations of Jamaica and Switzerland and their proposals to advance the work of the Committee on this issue.

127. The Delegation of Italy supported the revised proposal made by the Delegation of Jamaica, and in particular Articles 6 and 7 of the draft Joint Recommendation, which could be applied by national offices when examining trademarks containing country names. A Joint Recommendation would remind all Member States of the need to be more careful when considering this aspect.

128. The Delegation of Chile understood that the possible areas of convergence contained in document SCT/35/4 constituted a benchmark or point of reference that could be used by offices when trying to resolve issues connected with the registration or use of marks consisting of or containing country names. The Delegation supported this approach because it not only covered the concern of the Delegation of Jamaica and other SCT members but also provided the necessary flexibility to deal with the diversity of ways in which this issue was handled by members of the Committee. The Delegation believed that area of convergence number 4 on "Consideration of Other Elements of the Mark", could be included in area of convergence number 3, as in its view, if a mark consisted of a country name, it could not contain other elements. On the contrary and as per area of convergence number 4, if a mark contained other elements, it could be said that it contained the country name and therefore that case was already covered by area of convergence number 3. So it was necessary to clarify the hypothesis that was covered by area number 4. The Delegation agreed with area of convergence number 5 on Invalidation and Opposition Procedures, as along with areas number 2 and 3, it was considered a ground for refusal under national legislation, but such a refusal could not be decided by the Office and was subject of a request for opposition. The Delegation understood that possible area of convergence number 6 (Use as a Mark) found its rationale in Article 10 of the Paris Convention; however, the wording differed from that provision. First, the scope of the possible embargoes or seizures could go beyond the case provided in the Paris Convention, and secondly, the area of convergence referred to certain attributes of the products and services such as their quality or nature, which was vague and depended on a subjective appreciation. On the contrary, if the geographical place of origin were included, this could be proven by the rules of origin.

129. The Delegation of Iran (Islamic Republic of) attached great importance to the work of the SCT on the issue of the protection of country names. The studies undertaken by WIPO, which compiled national laws and practices, indicated there was a need for international action to prevent the registration or use of country names as trademarks. Therefore, the Delegation supported the proposal made by the Delegation of Jamaica for the development of a Joint Recommendations in this area.

130. The Delegation of Spain supported the declaration made by the Delegation of the European Union on document SCT/35/4 and noted its interest in exploring the refusal of trademarks including country names, as well as exploring the proposal to include the protection of country names in trademark examination manuals, and to look at possible convergence of practices. The Delegation supported the continuation of discussions on this topic.

131. In relation to area of convergence number 2, the Delegation of Colombia held the view that in many countries, a trademark was considered lacking any distinctive character when it included the name of a country. The Delegation noted that in the laws of Latin American countries, a sign which lacked distinctive character could or could not be descriptive and this was a separate assessment. However, if the sign was not distinctive it could not be considered a valid trademark. When the trademark consisted solely of a country name, in association with

products, this was rather an issue of geographical indications. Therefore, a division was necessary in area of convergence number 2 between the descriptive nature of the trademark on the one hand, as well as the confusion that might cause if the product did not come from the country named, and on the other hand, the case where there was a complete lack of distinctive character.

132. The Delegation of the Republic of Korea explained that the national Trademark Act provided for protection of country names included in trademarks. Trademark applications were refused where the use of a country name might be seen as insulting or was likely to cause disrepute to the country named in the trademark. Whenever necessary, interested parties could oppose such applications and request their invalidation. If product names misled customers as to the origin of the product, such use would be restricted under the Prevention of Unfair Competition Act. The Delegation appreciated the possible areas of convergence contained in document SCT/35/4 but said that it would need clarifications on several issues covered in the document, particularly the divergences that existed among Member States and how to overcome them. The Delegation endorsed the proposal made by the Delegation of Jamaica that a survey be conducted to identify the existing gaps.

133. The Delegation of Hungary believed that the existing international, regional, and national legal framework provided sufficient protection for country names especially in trademark applications that consisted solely of the name of a country. Concerning trademark applications where the country name was combined with other distinctive elements, further criteria should be used in the assessment of registrability, namely the knowledge of the average local consumer. For instance, when the consumer understood the country name as designating a place associated with the product covered by the mark. As such a determination would depend on the marketplace and the information available to the relevant consumers, practices concerning the determination of deceptive trademark applications remained divergent. Nevertheless, the expanded use of the Internet might change the picture and under that light, the Delegation saw merit in continuing work with a view to either identifying principles or finding common points that could be formulated in an abstract manner within the context of deceptiveness of trademark applications, as regarded the geographical origin of products.

134. The Delegation of South Africa expressed its willingness to engage in future discussions in relation to the suggested possible areas of convergence on the protection of country names but reiterated the view that it would not support a document in the format of a Joint Recommendation. The Delegation recalled that it had always been willing to consider and support a non-binding document.

135. The Delegation of Georgia commended the Secretariat for the reference document on the protection of country names against registration and use as trademarks and thanked the Delegation of Jamaica for its proposal, which highlighted the importance of the protection of country names. The Delegation shared the views of the CEBS Group, which had thoroughly studied the possible impact of adopting the proposed instrument and was ready to participate in future discussions on the issue, including a revised draft reference document considering national practice as well as the proposal presented by the Delegation of Jamaica.

136. The Delegation of the Russian Federation considered that document SCT/35/4, which proposed six areas of convergence, duly reflected the work of the Committee. The Delegation stood ready to work in further detail on the issue of the protection of country names as proposed by the Delegation of Jamaica.

137. The Chair noted that all statements concerning document SCT/35/4 would be recorded in the Report.

138. The Chair concluded that this item would remain on the Agenda and that the SCT would revert to it at its next session with sufficient time to enable a full discussion.

Update on Trademark-Related Aspects of the Domain Name System

139. Discussion was based on document SCT/35/5.

140. The Delegation of Hungary thanked the Secretariat for the update contained in the document. Concerning the Uniform Domain Name Dispute Resolution Policy (UDRP) review initiated at the Internet Corporation for Assigned Names and Numbers (ICANN), the Delegation highlighted uncertainties associated with the review process and expressed concerns. The Delegation further noted the lack of protection of geographical names as such in the Domain Name System (DNS). The Delegation concluded by expressing strong support for the continued monitoring of developments, and input by the Secretariat as appropriate.

141. The Delegation of Switzerland expressed support of the statement made by the Delegation of Hungary.

142. The SCT requested a further update at the next meeting.

AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS

143. The Delegation of Hungary, referring to the joint proposal contained in document SCT/31/8 Rev.5 on the protection of country names and geographical indications in the DNS, recalled that the proposal had been introduced in detail in the last three meetings of the SCT. However, the Delegation wished to highlight two important objectives that the proposal aimed to reach. The first objective concerned the possible extension of the WIPO UDRP to country names and geographical indications, currently limited to trademark rights only. In its opinion, country names and geographical indications, including appellations of origin, were subject matter of protection and individual States or holders of geographical indications should have the possibility to invoke those rights in the framework of the UDRP. The second objective related to means to render or enhance the protection of geographical indications and country names in the new DNS of ICANN. The Delegation recalled that more than a thousand of new top level domain names have been introduced by ICANN, which had attracted over 17 million second level registrations. The volume of this phenomenon demonstrated the size of the area where those prior rights could be misused. The Delegation believed that the demand from beneficiaries of geographical indications to have guarantees that their legitimate interests would be preserved was an argument in support of the proposal. At the same time, the Delegation, noting that the scope of the proposal was limited to a specific area of geographical indications and the protection of country names, believed that it would not be difficult to conduct work in that area. The Delegation also noted that the proposal was co-sponsored by ten delegations and its discussion within the SCT had generated positive reaction and broad support from Member States of the SCT. Finally, declaring its openness to discuss other proposals, the Delegation expressed the view that the SCT should first agree on the working method and its principles.

144. The Delegation of France declared that it was ready to go forward on the questions under discussion in a constructive spirit. Recalling the mandate given by the General Assembly on geographical indications, the Delegation acknowledged that the mandate to achieve an outcome on the DLT was more pressing. The Delegation therefore considered that the discussion on geographical indications could be deferred to a session of the SCT where more time would be available, so as to ensure convergence. The Delegation believed that all proposals could be reconciled and that an agreement on the working methodology and further

steps was needed. Finally, recalling that France was a Lisbon Union Member and that some questions remained open regarding the Lisbon Union, the Delegation reiterated its readiness to be constructive in discussing those questions.

145. The Delegation of Latvia, on behalf of the CEBS Group, recalled that the General Assembly had directed the SCT to examine different systems for protection of geographical indications within the current mandate and covering all aspects. At the outset, the CEBS Group had expressed its support to the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Poland, Portugal, Republic of Moldova, Spain and Switzerland to study the protection of geographical indications in the DNS on the Internet. Believing that the proposal was in line with the work of the SCT, the Delegation considered it crucial to have an in-depth analysis of the current situation. As conceptual gaps on this issue had been discovered during the expansion of the Top Level Domain Space, the Delegation believed it was important to better understand the complexities surrounding geographical indications and their protection in the DNS. Regarding other proposals under Agenda Item 7, the CEBS Group position remained unchanged. Though a number of tabled proposals had suggested examining geographical indication protection systems, it was known that geographical indications were protected either through trademark systems or through *sui generis* systems. Noting that some proposals went beyond the analysis of national systems, the Delegation concluded that those proposals would not fit into the SCT mandate.

146. The Representative of OriGIn reiterated its interest in a discussion on the protection of geographical indications in the DNS, especially in the context of the DNS expansion. Expressing the regret that a GI was not considered a valid title to contest a second level domain registration, the Representative stressed the importance of including it under the UDRP mechanism, mostly in light of the fact that one thousand new first level domains were operational and 17 million second level domains were registered. The Representative further expressed his concerns related to the costs of monitoring and enforcing geographical indication rights on the Internet, also in view of a new expansion of top level domains in future years. Noting that the number of disputes related to new top level domains under the UDRP was rising, the Representative wondered how to improve the legal protection of intellectual property rights so that Intellectual Property owners could benefit from the Internet, which was also an incredible tool to promote trademarks and geographical indications and to sell products all over the world. In conclusion, the Representative believed that the UDRP should comprise geographical indications and expressed the wish that cost effective systems for both geographical indication and trademark protection be studied within the SCT.

147. The Delegation of the European Union, speaking on behalf of the European Union and its member states, recalled that the work on GIs was guided by the decision of the General Assembly to direct the SCT to examine the different systems for protection of geographical indications within its current mandate and covering all aspects. Taking that decision into account, the European Union and its member states believed that work on geographical indications should be focused on the DNS, which was a very relevant and topical subject. The Delegation announced that it looked forward to the discussions on a study on GIs and the DNS, as proposed in document SCT/31/8 Rev.5. The study should investigate whether the need of users for the protection of geographical indications in the DNS had changed, whether the available measures for holders of geographical indications against infringing domain names were effective enough and how the existing legal and procedural framework could be improved. In relation to the other proposals on the table, the Delegation stated that the SCT had no legal mandate to touch upon, review or interpret the Lisbon Agreement or the Geneva Act of the Lisbon Agreement. As a consequence, the examination of the different systems for protection of geographical indications within the current mandate and covering all aspects could not be based upon the proposals contained in documents SCT/30/7 and SCT/31/7, as they related to the Lisbon Agreement and the Geneva Act of the Lisbon Agreement. The Delegation stressed the fact that any future revision of the Lisbon Agreement or the Geneva Act was the exclusive

prerogative of parties to these agreements. The Delegation also believed that a study in the area of geographical indications based on the proposal of the Delegation of the United States of America would add little as, in essence, it would only reiterate the obvious fact that some countries protected geographical indications through the trademark system and others, including the European Union, through a *sui generis* system. However, for the sake of consensus, the Delegation expressed its readiness to initiate a dialogue on national and regional regimes of geographical indications protection at SCT/36.

148. The Delegation of the United States of America, recalling that at the last session of the SCT the delegations had been very close to reach an agreement on a work plan on geographical indications, reiterated its proposal, with the intent to start from a simple base by soliciting questions from SCT member delegations to explore and share information on national systems for the protection of geographical indications. Pointing out that there were many issues to be identified during the examination process of a geographical indication, the Delegation considered that it could be useful to discuss many of those and to share experiences. The Delegation explained that its intent was to create a Member State-driven dialogue within the SCT so that all be a resource for each other. The Delegation was uncertain about the outcome of that dialogue and believed that proposing a series of further steps was difficult. However, as an initial matter, the idea of gathering questions by delegations would be very useful. The Delegation said that during the negotiation of the Trans-Pacific Partnership Agreement (TPP) that dialogue had occurred as the negotiators were working through complicated geographical indication systems around the world, involving multiple agencies with multiple competencies. Many of those agencies were not functioning as intellectual property registries. The Delegation noted that the TPP partners had found common ground and agreed to fundamental principles, thus achieving a broad geographical indication framework agreement. The dialogue was complicated but it had been enriching to be able to sit across the table, ask questions about another regime, get answers and then try to draft around that. Taking into account that experience, the Delegation believed that a similar dialogue within the SCT would be very valuable to understand each other's system and would make a big difference in finding a way forward. Considering that proposing to start that dialogue on examination practices was of each country's interest and benefit, the Delegation recalled that an agreement had been almost reached last time and expressed the hope to start the work on geographical indications.

149. The Delegation of Switzerland, referring to the mandate conferred by the General Assembly to the SCT, expressed the hope that the discussion on geographical indications would result in the adoption of a roadmap so that the SCT could resume its work on geographical indications. In this perspective, the Delegation believed that the discussion should be focused on the different national and regional systems for protection of geographical indications and take into account the issues raised by the Member States. Referring to the issue of geographical indications and country names within the DNS, the Delegation noted the support and interest to that proposal expressed by many delegations. The Delegation was of the view that those subjects could be combined and an agreement on the work plan could be reached. The Delegation concluded by reaffirming its commitment towards reaching that agreement.

150. The Delegation of Colombia, while expressing its openness for a dialogue and study of the different issues raised in the proposals, believed that they were all equally important for the development and general understanding of how each system worked. Referring to the concerns expressed by the Representative of OriGIn, the Delegation believed that the subject of geographical indications and country names within the DNS should be part of a wider discussion on the scope and protection of geographical indications. Expressing support for the statement made by the Delegation of Switzerland, the Delegation believed that it was worth to establish a work plan based on a questionnaire. The Delegation also aligned itself with the proposal made by the Delegation of the United States of America. The Delegation was of the

view that this subject was still of interest to Member States, irrespective of the work on geographical indications conducted previously within the framework of the SCT. The Delegation stressed the fact that different protection systems were not limited to *sui generis* or to the trademark systems, but also included unfair competition, consumer protection and other more general regulatory systems. The Delegation, noting the importance of finding common grounds in those systems, wished also to find answers to specific questions related to the requirements for registration of collective and certification marks, proof on the link between the product and its geographical origin, protection of geographical indications within the DNS, prior rights and the concept of misleading consumers. Therefore, the Delegation believed that it was crucial to agree on a work plan, which would tackle each of those questions.

151. The Delegation of Chile, expressing its support for the proposal made by the Delegation of the United States of America, underlined the importance of adopting a balanced work plan on geographical indications and of fulfilling the mandate given by the General Assembly. Supporting the idea of a constructive dialogue, the Delegation welcomed with great interest the proposal according to which SCT members could raise questions regarding national systems for the protection of geographical indications. For the same reason, the Delegation commended the proposal on a study on the protection of geographical indications and country names within the DNS. The Delegation shared a part of the concerns indicated in the proposal and acknowledged its specific interest in investigating the needs of users on the protection of geographical indications in the DNS, which could be done through a study or, alternatively, a seminar. The Delegation concluded by stating that it was important to be realistic, to take into account all the interests expressed by the Member States and to achieve a consensus, without prejudging the results of that exercise.

152. The Delegation of Spain aligned itself with the statement by the Delegation of the European Union.

153. The Delegation of Indonesia, expressing its interest in a discussion on geographical indications, informed the SCT that Indonesia was currently reforming its national legislation and creating an effective system to protect geographical indications, although it was not a member of the Lisbon Agreement. The Delegation further said that Indonesia was negotiating bilateral and regional agreements with a number of countries. Therefore, stressing the importance of sharing the information, the Delegation was interested in the Committee looking into the various different national systems for protecting geographical indications. The Delegation pointed out the usefulness of having a full picture of the protection of geographical indications in most of the countries of the world. The Delegation believed that such a picture would be useful for harmonization purposes and for a better understanding of the commonalities and differences in approaches to geographical indication protection adopted by various Member States. Referring to the statement made by the Delegation of the United States of America, the Delegation wished to know more about the TPP or other bilateral or regional agreements on geographical indications. In conclusion, noting that geographical indications were not only on WIPO's Agenda but also in WTO, the Delegation supported the carrying out of an analysis of various national legislations on geographical indications.

154. The Delegation of Australia expressed its support for adopting a work program on geographical indications in the SCT. Observing that geographical indications were a significant and contentious area of International intellectual property law, the Delegation believed that there could only be advantages in a discussion on specific issues of policy interest to SCT members on the different national systems for the protection of geographical indications as well as the different mechanisms for obtaining international protection. The Delegation was of the view that the SCT was well placed for that discussion because of the diversity of geographical indication regimes established in its membership. Even though the SCT had already spent some years discussing various aspects of geographical indication protection in detail, those discussions had ceased 10 years ago. National and international circumstances had changed in the interim.

Some WIPO members had developed, implemented or amended their national geographical indication systems since then and might be better placed to discuss their legal and policy settings. Finally, the Delegation stated that it was open to the idea of inviting Member States to identify specific issues and to agree on a work program that would make headway on the interests of all SCT members.

155. The Delegation of Japan expressed its support for a study to examine various national legal approaches to specific geographical indication topics. Considering that such study would help to deepen the understanding of various geographical indication issues, the Delegation lent its support to the proposal of the Delegation of the United States of America.

156. The Delegation of Israel, expressing its support for the statements made by the Delegation of the United States of America and Chile, reiterated the view that an exchange of information regarding geographical indications between Members States in the form of an inclusive dialogue would be beneficial to all.

157. The Delegation of Georgia, expressing its support for the joint proposal presented by the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Poland, Portugal, Republic of Moldova, Spain and Switzerland on the protection of geographical indications in the DNS, believed that such a study could only benefit countries and users.

158. The Delegation of the Republic of Korea believed that there was an added value in studying various approaches for the protection of geographical indications, considering that such systems differed from country to country. The Delegation announced that it would be pleased to share with WIPO Member States its experiences in implementing various geographical indication protection systems. The Delegation, lending its support to the proposal made by the Delegation of the United States of America, was of the view that a survey on each Member State's geographical indication protection system and practice would help to understand how other SCT Member States handled geographical indication issues such as, for example, conflicting interests between trademarks and geographical indications.

159. The Delegation of Canada believed that there was value added in studying the various geographical indication protection systems at national/regional levels and expressed its support for the statements made by Australia and the United States of America.

160. The Delegation of Argentina, lending its full support to the discussion of issues related to the different national systems for the protection of geographical indications, believed that comprehensive information on the complex international panorama of geographical indications would be useful for all SCT members. In this regard, the Delegation supported the proposal put forward by the Delegation of the United States of America to carry out studies on national systems for the protection of geographical indications based on a questionnaire, considering it as a first step in a geographical indication work program.

161. The Delegation of Mexico echoed the statement made by the Delegation of the United States of America, supported by the Delegations of Canada and Japan.

162. The Delegation of Uruguay reiterated that the SCT was the appropriate forum to discuss geographical indications. As ten years had gone by since the last time that the SCT had discussed geographical indications, the Delegation presumed that many legislations had changed and therefore considered that it would be useful to have updated information on the existing systems of protection of geographical indications.

163. The Delegation of Iran (Islamic Republic of) lent its support to the proposal made by the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Poland, Portugal, Republic of Moldova, Spain and Switzerland.

164. The Chair concluded that all points in this item would remain on the Agenda and that the SCT would revert to this item at its next session, with sufficient time to enable a full discussion on a work program on geographical indications at the Committee.

AGENDA ITEM 8: ADOPTION OF THE SUMMARY BY THE CHAIR

165. The SCT approved the Summary by the Chair as presented in document SCT/35/7.

AGENDA ITEM 9: CLOSING OF THE SESSION

166. The Delegation of Greece, speaking on behalf of Group B, expressed its disappointment about the fact that, despite the tireless efforts and considerable flexibility demonstrated by most members to contemplate solutions, the SCT was not able to finalize the text and reach an agreement. The Delegation further expressed its gratitude to the Chair for its perseverance in helping SCT members to find common solutions during the negotiations

167. The Delegation of Latvia, speaking on behalf of the CEBS Group, congratulated the Chair on his determination, patience and commitment to advance the work. The Delegation extended its thanks to the delegations that demonstrated flexibility throughout the negotiations and to the Secretariat and interpreters for the support provided.

168. The Delegation of India, speaking on behalf of the Asia and the Pacific Group, expressed its disappointment about the fact that, despite the work done on the DLT, the SCT was not able to reach a consensus. The Delegation believed that, as a general principle, the mandate of any treaty should reach out the groups with diametrical views and help them to bridge gaps, taking into consideration their concerns. While it acknowledged that reaching consensus was a difficult and painstaking task, the Delegation expressed the view that it was very important, especially in a system where consensus was the final barometer of success. The Delegation expressed the hope to see positive movement and consensus to take the draft DLT to the diplomatic conference.

169. The Delegation of Bahamas, speaking on behalf of GRULAC, thanked the Chair and Vice-Chairs for their tireless efforts during the discussions. The Delegation stated that it looked forward to the General Assembly, where a further exchange among all members would take place and where a consensus could be reached. The Delegation was convinced that GRULAC had done its best towards reaching an agreement. With regard to other Agenda items, the Delegation expressed gratitude for the discussion on trademarks and geographical indications, indicating that it was committed to consider the proposals put forward on those topics and to further contribute to the process.

170. The Delegation of Nigeria, speaking on behalf of the African Group, expressed its gratitude to the Chair for his hard work and immense efforts to try to reach consensus on divergent issues. The Delegation, expressing its regret for the lack of a desired outcome, considered that delegations should try to listen better to each other. Expressing its confidence on the future, as there were several options on the table, the Delegation said that there would be opportunities to work towards an agreement. The Delegation concurred with the Delegation of Bahamas in that the General Assembly would be the appropriate body to make decisions and conclude areas of divergence in the work of the Committee.

171. The Delegation of the European Union, speaking on behalf of the European Union and its member states, wished to thank the Chair for his tireless and ceaseless efforts and expressed the regret that his bravura performance had not been crowned at the end of the day. The

Delegation regretted that the Committee had not been able to conclude on DLT, though all delegation had vested interest in achieving success that day. The Delegation stated that it would continue its endeavors to see whether the possibility existed for an agreement at a later stage.

172. The Delegation of China, thanking the Chair for his assiduous efforts on the work, declared that it looked forward to the future and hoped that progress would be made to the benefit of all Member States.

173. The Delegation of Latvia, speaking in its capacity as Vice-Chair of the WIPO General Assemblies, said that failing to agree on the request of the decision of the General Assembly, which was within the reach of the Committee, made everyone a loser, starting with the designers who were losing the prospect of obtaining an international agreement on the subject in the near future. The losers were, not only the Organization, which had failed to conclude work on the legislative base, and every delegation, but also the atmosphere, which had been the main achievement of the last General Assemblies. Expressing the hoping that the situation would not have any ripple effect, the Vice-Chair noted that damage had nevertheless been done to the Organization. He added that the General Assemblies would assume all responsibilities and try to find a solution in order to meet the decision and convene the diplomatic conference in 2017, although it would probably be more difficult than if an agreement had been reached today. To conclude, the Vice-Chair of the General Assembly hoped that a solution would be found, and expressed his personal thanks to the Chair for his outstanding work.

174. The Representative of HEP, regretting that States had not been more flexible, expressed the hope that good results would be achieved in the future.

175. The Representative of AIPPI expressed the wish that, in the future, SCT members would reach an accord, as valuable time had already been wasted. He noted that, in the meantime, users and clients represented by AIPPI remained without a system. The Representative reported to the Committee that, of the millions of designs which had been filed, not one single AIPPI user had been able to identify a design for which biological or genetic resources would have any impact whatsoever.

176. The Chair, referring to the statement made by the Vice-Chair of the WIPO General Assembly, said that, as opportunities were often counted on the fingers of one hand, he regretted that the Committee had missed this opportunity. He stated that, despite this outcome, he remained optimistic and wished the WIPO General Assembly good luck in resolving the situation.

177. The Chair closed the session on April 27, 2016.

[Annexes follow]



SCT/35/7
ORIGINAL: ENGLISH
DATE: APRIL 27, 2016

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

**Thirty-Fifth Session
Geneva, April 25 to 27, 2016**

SUMMARY BY THE CHAIR

AGENDA ITEM 1: OPENING OF THE SESSION

178. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the thirty-fifth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.

179. Mr. Marcus Höpperger (WIPO) acted as Secretary to the SCT.

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

180. Mr. Adil El Maliki (Morocco) was elected Chair. Mr. Imre Gonda (Hungary) and Mr. Alfredo Carlos Rendón Algara (Mexico) were elected Vice-Chairs of the Committee.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

181. The SCT adopted the draft Agenda (document SCT/35/1 Prov.).

AGENDA ITEM 4: ADOPTION OF THE REVISED DRAFT REPORT OF THE THIRTY-FOURTH SESSION

182. The SCT adopted the revised draft Report of the thirty-fourth session (document SCT/34/8 Prov.2).

AGENDA ITEM 5: INDUSTRIAL DESIGNS

183. The Chair noted that the SCT had been working throughout the session with the objective to finalize the basic proposal for the DLT as requested by the WIPO General Assembly decision with a view to convene a diplomatic conference for the adoption of a Design Law Treaty at the end of the first half of 2017. To that end, the Chair has presented a number of proposals to the SCT.

184. The Chair concluded that a number of delegations were of the opinion that the work of the SCT was sufficient to consider that the basic proposal was finalized. Other delegations considered that the work of the SCT constituted a sufficient ground for finalizing the basic proposal and that a few elements needed further work. Other delegations considered that the work of the SCT was not sufficient to finalize the basic proposal.

185. An exchange of views took place on the proposal by the Delegations of the United States of America, Japan and Israel, contained in document SCT/35/6.

186. The Chair requested the Secretariat to prepare a Questionnaire, based on document SCT/35/6, to be addressed to all Member States of WIPO. He further requested the Secretariat to prepare a document containing the replies to that Questionnaire, to be presented at the next session of the SCT.

AGENDA ITEM 6: TRADEMARKS

Protection of Country Names Against Registration and Use as Trademarks: Practices, Approaches and Possible Areas of Convergence (document SCT/35/4) and *Revised Proposal by the Delegation of Jamaica* (document SCT/32/2)

187. The Chair noted that all statements concerning documents SCT/35/4 and SCT/32/2 would be recorded in the Report.

188. The Chair concluded that this item would remain on the Agenda and that the SCT would revert to it at its next session with sufficient time to enable a full discussion.

Update on Trademark-related Aspects of the Domain Name System

189. The SCT considered document SCT/35/5 and the Secretariat was requested to keep Member States informed of future developments in the Domain Name System.

AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS

190. The Chair noted that all statements concerning this Agenda item would be recorded in the Report.

191. The Chair concluded that all points in this item would remain on the Agenda and that the SCT would revert to this item at its next session, with sufficient time to enable a full discussion on a work program on geographical indications at the Committee.

AGENDA ITEM 8: SUMMARY BY THE CHAIR

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

AGENDA ITEM 9: CLOSING OF THE SESSION

193. The Chair closed the session on April 27, 2016.

[Annex II follows]



SCT/35/INF/1
ORIGINAL: FRANÇAIS/ANGLAIS
DATE: 27 AVRIL 2016 / APRIL 27, 2016

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

**Trente-cinquième session
Genève, 25 – 27 avril 2016**

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

**Thirty-Fifth Session
Geneva, April 25 to 27, 2016**

**LISTE DES PARTICIPANTS
LIST OF PARTICIPANTS**

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prepared by the Secretariat*

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

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