

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

**Thirty-Eighth Session**  
**Geneva, October 30 to November 2, 2017**

### **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”, “the Committee” or “the SCT”) held its thirty-eighth session, in Geneva, from October 30 to November 2, 2017.

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, Barbados, Belgium, Benin, Bhutan, Bosnia and Herzegovina, Brazil, Brunei Darussalam, Burundi, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Cyprus, Democratic Peoples’ Republic of Korea, Denmark, Dominican Republic, El Salvador, Estonia, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Kyrgyzstan, Latvia, Lithuania, Madagascar, Malaysia, Mauritania, Mexico, Monaco, Morocco, Mozambique, Myanmar, Netherlands, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovakia, South Africa, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey,

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

Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uzbekistan, Viet Nam and Zimbabwe (100). The European Union was represented in its capacity as a special member of the SCT. Solomon Islands were represented in their capacity as Observer.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), African Regional Industrial Property Organization (ARIPO), African Union (AU), Benelux Organisation for Intellectual Property (BOIP), South Centre (SC), World Trade Organization (WTO) (6).

4. Representatives of the following non-governmental organizations (NGOs) took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), ASEAN Intellectual Property Association (ASEAN IPA), *Association française des praticiens du droit des marques et modèles* (APRAM), Centre for International Intellectual Property Studies (CEIPI), European Brands Association (AIM), European Law Students' Association (ELSA International), Intellectual Property Owners Association (IPO), International Association for the Protection of Intellectual Property (AIPPI), International Federation of Intellectual Property Attorneys (FICPI), International Chamber of Commerce (ICC), Internet Society (ISOC), International Trademark Association (INTA), International Wine Law Association (AIDV), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), MARQUES - Association of European Trade Mark Owners, Organization for an International Geographical Indications Network (oriGIn) (17).

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

6. The Secretariat noted the interventions made and recorded them. This report summarizes the discussions on the basis of all observations made.

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

7. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the thirty-eighth session of the SCT and welcomed the participants.

8. Mr. David Muls (WIPO) acted as Secretary to the SCT.

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

9. The SCT adopted the draft Agenda (document SCT/38/1 Prov.).

#### **AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-SEVENTH SESSION**

10. The SCT adopted the draft Report of the thirty-seventh session (document SCT/37/9 Prov.).

*General Statements*

11. The Delegation of Indonesia, speaking on behalf of the Asian and the Pacific Group, said that it attached great significance to intellectual property as an important catalyst to socio-economic and technological development, as well as to an equitable and just international intellectual property regime, not only to promote innovation but also sensitive to the diverse developmental needs of Member States. The work of the Committee should not lose sight of this important concept and should work towards maintaining the equilibrium between the interests of the right holders and the larger public welfare. The Group, appreciating, and looking forward to, a successful information session on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, believed that the information session would further enhance the collective understanding and would allow delegations to hear from practices of offices as well as experiences of users with regard to GUI, Icon and Typeface/Type Font Designs. The Group hoped that future discussions and exchanges would also allow delegations to learn from a diverse array of speakers with different backgrounds and experiences. On the Design Law Treaty (DLT), the Group considered that the work of the SCT was to focus on finding a common landing zone among the Member States on the text of a possible treaty. Like any other international instrument, the implementation of the DLT should be accompanied with enhanced capacity of Member States to carry out the obligations arising out of the new Treaty. The proposed Treaty should address the important issue of capacity building in the intellectual property regimes of developing countries and least developed countries (LDCs). Although some members had expressed flexibility as to the placement of such a provision – either in the Treaty or in a resolution – most members of the Group favored placing the provision on technical assistance as an article in the main body of the proposed Treaty. The Delegation hoped that a consensus decision could be reached on the matter, which would satisfy all Member States. The Delegation noted that most of the members of the Group supported the principle of disclosure and were of the view that, as sovereign Member States of WIPO, countries should have the flexibility to include, as part of the design eligibility criteria, components that were deemed important to complete the formalities for protection of industrial designs in their jurisdictions. However, some members of the Group had expressed different positions on the issue of disclosure of source. Taking note of the decision by the 2017 WIPO General Assembly, the Group was optimistic that a mutually agreed outcome would be reached regarding the matter as soon as feasible and was ready to engage constructively towards resolving all outstanding issues and bridging the position gaps concerning Articles 3 and 22 of the DLT. The Delegation stated that developing countries should have ample policy space to shape their industrial design protection system in accordance with national interests, as envisaged in the TRIPS Agreement. The Group stood ready to discuss the proposal on industrial designs and new technologies and hoped that the Information Session on GUI, Icon and Typeface/Type Font Designs would enrich the discussion. Regarding the extension of the Digital Access Service (DAS) for priority documents to trademarks and industrial designs, the Group held the view that it would reduce the burden on applicants when preparing the documents required for priority claims. The Group welcomed further updates on the matter and its members were ready to take part in the related discussions. Furthermore, the Group hoped to see progress towards consensus on the issue of the protection of country names and geographical indications. There was a need for international action to prevent the undue registration or use of country names as trademarks and the Group, in general, supported the proposal made by the Delegation of Jamaica for the development and future adoption of a Joint Recommendation. The different examples heard on the use of country names as word marks had also demonstrated the fact that country names seemed not to be offered sufficient protection in practice. With regards to geographical indications, the Group was ready to engage constructively on the basis of the Chair's proposal as reflected in document SCT/38/4, and as the Committee was very close at the last session, the Group was optimistic that a mutually acceptable solution could be found on the matter at the SCT session. Considering that the update report provided by the Secretariat relating to trademarks and 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, the Group requested the Secretariat to continue providing details about the specific tools and mechanisms deployed, if any, to facilitate the access and use of such services for users from developing countries and LDCs. Finally, the Group looked forward to a constructive discussion and productive results in the deliberations during the thirty-eighth session of the SCT.

12. The Delegation of Costa Rica, speaking on behalf of the Group of Latin American and the Caribbean Countries (GRULAC), reaffirmed its interest in continuing to work constructively in discussions on all outstanding issues during the course of the week. Concerning industrial designs, the Group regretted that a decision to convene a diplomatic conference on the DLT during the 2017 WIPO General Assembly had been postponed until the upcoming 2018 WIPO General Assembly. GRULAC expected that an agreement would be reached and reiterated that effective technical assistance and national capacity building continued to be of vital importance for the region. The Delegation was of the view that the protection of country names was extremely important to GRULAC, as those names could be successfully used in country branding schemes that would add value to products and services through the use of marks, especially in developing countries. As mentioned on previous occasions, GRULAC considered that consistent protection for country names at the international level was lacking, as it had been made clear in the Study prepared by the Secretariat for the twenty-ninth session of the SCT. The Group was therefore committed to continuing the discussions on the topic. The Group also looked forward to the discussion on geographical indications, with a view to continuing the analysis of the various proposals under that agenda item. In the Group's view, document SCT/38/4, containing the Chair's proposal on geographical indications, contained a good basis for guiding the discussions.

13. The Delegation of Senegal, speaking on behalf of the African Group, indicated that it continued to attach great importance to the discussions taking place within the SCT, which were all major challenges and constituted a matter of real interest for the world system of intellectual property. The Group looked forward to the holding of the Information Session on GUI, Icon and Typeface/Type Font Designs, hoping that it would enrich the resources available to SCT members. Concerning industrial designs, the African Group regretted that the WIPO 2017 General Assembly had failed to reach agreement on the convening of a diplomatic conference with a view to adopting the DLT. The Group, underlining its flexibility and constructive spirit in formulating specific proposals on the disclosure clause relating to genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs), expressed its strong interest for the inclusion of an article in the main body of the Treaty. The Group remained optimistic that the decision taken by the 2017 General Assembly would enable the standard-setting project under consideration to have a successful outcome in the near future, following an inclusive approach and taking into account the different concerns raised. Concerning GUI, Icon and Typeface/Type Font Designs and the DAS, the Group welcomed the enlightening contributions made by Member States and the work done by the Secretariat. With regards to trademarks, the Delegation took note of document SCT/38/2 containing the Secretariat's analysis of Member States' comments with respect to the protection of country names against their registration as trademarks. The Group observed that the analysis excluded from its scope of application Areas of Convergence Nos. 3 and 4. The Group also took note of document SCT/38/3 containing updated information on aspects of the DNS relating to trademarks, particularly focused on the administration of disputes and policy developments. Concerning geographical indications, the Group, thanking the Chair for his proposal contained in document SCT/38/4, hoped that the Committee would agree on a consensus-based work program in the area. Underlining its support for, and confidence in, the Chair's approach to the issue, the Group reaffirmed its commitment to work constructively in the discussions on the different agenda items of the thirty-eighth session of the SCT.

14. The Delegation of Georgia, speaking on behalf of the Group of Central European and Baltic States (CEBS), indicated that it was disappointed that Member States had failed to reach consensus during the previous series of sessions of the General Assemblies, based on considerations falling outside of the scope of the DLT. Pointing out that the Group was not in favor of discussing the DLT at the SCT, the Delegation considered that there were a number of important issues on the Agenda, including the Questionnaire on GUI, Icon and Typeface/Type Font Designs and the work program on geographical indications. The Group supported continuing the discussions on those issues in order to advance the SCT work in those areas. Additionally, the Group looked forward to constructive discussions to find convergences among the laws and practices of different Member States on the issue of country name protection. In relation to geographical indications, the Delegation expressed its willingness to engage in discussions on the documents presented to the Committee, in order to work out a balanced and inclusive work program. However, the Group restated that the work of the SCT should in no way interpret or review the provisions of the Lisbon Agreement or the Geneva Act. Finally, the Group reaffirmed its commitment to actively engage in discussions and expressed the wish that the work of the Committee would be carried out in a pragmatic and efficient manner.

15. The Delegation of Switzerland, speaking on behalf of Group B, expressed its regret that a decision to convene a diplomatic conference on the adoption of the DLT had not been taken during the General Assembly. The Delegation looked forward to devoting the Committee's time to other issues on the Agenda, including the questionnaire and corresponding analysis of GUI, Icon and Typeface/Type Font Designs, the protection of country names, and the examination of different systems for the protection of geographical indications. Group B considered that new technologies related to designs, such as GUI, Icon and Typeface/Type Font Designs in computer applications, were playing an increasingly important role in commerce and innovation and now formed a significant percentage of all industrial design filings. Those numbers continued to increase and, accordingly, Group B welcomed the information session on GUI, Icon and Typeface/Type Font Designs, which would provide the SCT with the necessary information and examples in order to have fruitful and informed discussions on the matter. Group B looked forward to discussing new technological designs and to hearing how intellectual property offices accommodated such designs. The Delegation also looked forward to a constructive discussion and work on the protection of country names in the area of trademarks and domain names, informed by the Chair's proposal in document SCT/38/4. Group B remained strongly supportive of the SCT as an important forum to discuss issues, facilitate coordination and provide guidance on the progressive development of international intellectual property law on trademarks, industrial designs and geographical indications. The Delegation encouraged all delegations to join the discussions on each topic and expressed its constructive spirit.

16. The Delegation of China, recalling that the SCT played an important role in terms of constructing balanced and effective multilateral rules, hoped that the Committee would play a better role in responding to the needs of users and that the efforts of Member States would make constant progress. The Delegation, expressing the hope that a diplomatic conference for the adoption of the DLT would be convened, called on Member States to take good consideration of other Member States' views, to be inclusive and open, in order to make substantial progress. Welcoming the Information Session on GUI, Icon and Typeface/Type Font Designs, the Delegation supported the discussion on the topic, as well as the questionnaire and analysis, since the resulting information would help countries to improve their systems. The Delegation also supported the extension of the DAS to industrial designs in order to reduce the burden of applicants in preparing relevant priority documents. In terms of the protection of country names and geographical indications, the Delegation expressed the view that, within the framework of the Paris Convention and the TRIPS Agreement, more studies and surveys should be conducted in order to lay a good foundation for an inclusive system. Finally, the Delegation hoped that the session would be crowned with success.

17. The Delegation of the European Union, speaking on behalf of the European Union and its member states, believed in the importance to hold fruitful discussions in all key areas covered by the SCT but, in the end, also to come to clear and tangible results that would have a positive impact on stakeholders. With regard to trademarks, observing that the Committee had been discussing the protection of country names against their registration and use as trademarks, the European Union and its member states shared the view that it was important to ensure effective protection to country names and considered that there were legal means in place to secure appropriate protection in national legislations. In this regard, the work carried out in the Committee so far had not revealed a need for additional action other than awareness raising, which should focus in particular on the availability of grounds for refusal or invalidation of trademarks containing country names and on the possibility of addressing the relevant issues in trademark examination manuals. At the same time, the Delegation noted the calls for further work on the issue and remained open to paving the way for greater transparency of national practices. In order to further explore the implications of diverging solutions currently in place and to mutually explain the various rationales, the European Union and its member states proposed that the Committee consider the possible merits of organizing an information session dedicated to country names. As regards industrial designs, the Delegation said that the European Union and its member states had aimed to break the political deadlock of the last years at the General Assembly, which had prevented such Assembly from taking a decision on the convening of a diplomatic conference for the adoption of the DLT. Regrettably, despite the best endeavors and unprecedented level of flexibility from the side of the European Union and its member states, and despite coming very close, an agreement had proved yet again out of reach. Instead, the General Assembly had decided that at its next session in 2018, it would continue considering the convening of a diplomatic conference on the DLT. In light of that unfavorable result, the Delegation referred to the discussions held during SCT/36 and the conclusion of the Chair that, while the DLT would remain on its Agenda, the SCT should abide by the decision of the General Assembly. Accordingly, the European Union and its member states reiterated their position that discussions on the DLT should not be held in the Committee. In relation to GUI, Icon and Typeface/Type Font Designs, the European Union and its member states looked forward to participating in the information session and learning about the practices of offices and the experience of users. The Delegation said that it would also continue discussions on the work program in relation to geographical indications, specifically on the Chair's proposal. The European Union and its member states remained committed to developing a work program that would be acceptable to all WIPO members, in accordance with the SCT mandate and in line with the 2015 General Assembly decision that directed the SCT to examine the different systems for protection of geographical indications, within its current mandate and covering all aspects. The Delegation noted, however, that the work of the SCT should respect the SCT mandate and framework, and should build on, and avoid duplication of, work already completed by the SCT or covered by existing Treaties and intellectual property systems administrated by WIPO. Furthermore, the SCT should not aim to interpret or revise the provisions of the Lisbon Agreement or the Geneva Act. Any future revision of the Geneva Act was the exclusive prerogative of the members of the Lisbon Union. After having studied the Chair's proposal in detail, the European Union and its member states observed that they found much in it to commend, notably the proposal to discuss the protection of geographical indications on the internet and in the DNS. While not excluding a wider discussion, the European Union and its member states considered that the work should be focused on the issues faced by stakeholders today. The Delegation looked forward to discussing the question under consideration further, with a view to reaching consensus, and to continuing work in all three key areas of the SCT.

18. The Delegation of Jamaica recalled that since 2009, it had advocated within the Committee for more consistent, adequate and effective protection for the names of States, as they were of equal importance as the flags or armorial bearings, already protected under the Paris Convention. The Delegation affirmed that, although protection was available in theory for country names through existing trademark laws, such protection was often limited to particular

circumstances, leaving ample opportunity for persons and entities to nevertheless abuse and unfairly free-ride on the goodwill and reputation of a country name. In practice therefore, the protection theoretically existing for country names by existing trademark law interpretation and practice was incomprehensive, inadequate and insufficient. The Delegation added that the results of the study prepared by the Secretariat to identify possible best practices for the protection of country names, at the twenty-ninth session of the Committee, had provided factual support to the inadequacy of existing mechanisms. The problem of lack of protection of country names internationally was now exacerbated by the threat of the registration of new top level domain names which comprised country names, country adjectives or country codes. The Delegation remained open to working constructively with all Member States and the Secretariat to find solutions for the effective protection of country names that would enjoy the consensus of the entire Membership, and looked forward to continued focused discussions and progress on those issues within the session.

19. The Delegation of Trinidad and Tobago, indicating that it continued to support the dynamic strides and notable advances made by the SCT, said that it regretted that an agreement to convene a diplomatic conference on the DLT had not been reached during the General Assembly. The Delegation added that the discussions on the DLT were of particular interest to Trinidad and Tobago as the country had agreed in principle to accede to the Hague Agreement. In this regard, the Delegation looked forward to continuing discussions on the DLT. The Delegation was also interested in discussions on GUI, Icon and Typeface/Type Font Designs, particularly in light of the growing number of software applications by the design sector in the country. In addition, the issue of the protection of country names remained relevant and of particular importance to countries in the Caribbean, as each country in the region possessed its own distinctive identity with respect to culture, food, music, tradition and sport. Such unique identity provided an increased opportunity for international trade. As Trinidad and Tobago sought a diversified economy, discussions on the protection of country names, for example “Brand Trinidad and Tobago”, were essential. Expressing its support for the proposals made by the Delegations of GRULAC and Jamaica on the importance of country names, the Delegation looked forward to the discussions on the topic. The Delegation also looked forward to continuing discussions on an international harmonized approach for the filing and protection of geographical indications, as well as for the protection of geographical indications on the DNS. The topics were of particular importance to Trinidad and Tobago, as the country had embarked on initiatives with local stakeholders to encourage the filing of local geographical indications. The Delegation was pleased to report to the Committee that, in August 2017, the first geographical indication “Trinidad Montserrat Hills Cocoa”, which had an international reputation had been registered at the Trinidad and Tobago Intellectual Property Office. The Delegation concluded by saying that it looked forward to the continued work of the SCT, which guided Member States towards enhancing their development.

20. The Delegation of Brazil, aligning itself with the statement made by the Delegation of Costa Rica on behalf of GRULAC, regretted that a consensus to convene a diplomatic conference to adopt the DLT had not been reached in the General Assembly. The Delegation hoped that Member States would show more flexibility to find common ground and eventually reach an agreement on the topic before the next General Assembly. Indicating that an exponential growth in geographical indication registrations had been observed in Brazil over the last years, the Delegation said that geographical indications remained a topic of particular interest to its country. Therefore, the Delegation would continue to engage constructively in the discussions. The Delegation believed that the Chair’s proposal, contained in document SCT/38/4, was a good basis for guiding the discussions on the agenda item. As for trademarks, without prejudice to the ongoing discussions in the Committee, the Delegation believed that there was room for initiating constructive and meaningful dialogues on other dimensions of the topic, such as sharing experiences on national programs regarding the expansion of a

trademark culture among small and medium-sized enterprises (SMEs), in line with WIPO Development Agenda (DA) Recommendation 4. The Delegation looked forward to having fruitful discussions in the Committee.

21. The Delegation of Uganda aligned itself with the statement delivered by the Delegation of Senegal on behalf of the African Group. Regarding the DLT, the Delegation supported the convening of a diplomatic conference to adopt the Treaty and was hopeful that the 2018 General Assembly would be able to build consensus on the matter. However, in the current form of the DLT, the Delegation held the view that the draft text was not balanced and inclusive and did not cater for the interests of a broad section of the WIPO membership. The Delegation observed that WIPO DA Recommendation 15 enjoined to ensure that norm-setting activities should be inclusive, take into account different levels of development and take into consideration a balance between costs and benefits. The Delegation considered that a substantive article on the disclosure requirement, which was a procedural matter, would guarantee that the Treaty was balanced. With regard to geographical indications, the Delegation strongly believed that the Committee had a mandate to discuss the progressive development of geographical indication protection systems. The Information Session on Geographical Indications organized during the thirty-seventh session of the SCT, had shown that the different rules at play at national and regional levels caused significant challenges for producers pursuing international registration. In some countries and regional systems, protected geographical indications could be regarded as a type of collective form of certification, while in others, trademarks could also be considered to protect geographical indications. In that regard, there was a need to further explore the possibility of enhancing geographical indication protection in an inclusive manner at the international level. Therefore, the Delegation supported the proposal made by the Chair contained in document SCT/38/4, as it would enable the Committee to take an informed view on issues relating to geographical indications. The Delegation also expressed its support for the efforts to enhance the protection of country names. The Delegation observed that a country should have the flexibility to either prevent misuse of its name or set conditions for its use by persons without any association with the country. The digital revolution had enabled countries to step-up their efforts to promote business and attract investment and tourism, and most of them had created distinctive logos bearing their names. In conclusion, the Delegation said that it remained ready to engage constructively in discussions on all issues.

#### **AGENDA ITEM 4: INDUSTRIAL DESIGNS**

##### *Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*

22. The Chair, highlighting the usefulness and educational nature of the Information Session on GUI, Icon and Typeface/Type Font Designs held in the morning, thanked the Secretariat for the organization of the session and all SCT members for their participation in the event. Observing that the session had helped the Committee to consider the future of the question under discussion, the Chair invited delegations to express their opinion about it.

23. The Delegation of Iran (Islamic Republic of), expressing its gratitude to the Secretariat and to all speakers for the successful organization of the Information Session, was of the view that the session had positively contributed to the objective of reaching a common understanding among Member States, by addressing the features, experiences and practices of the different national and regional systems.

24. The Delegation of Georgia, speaking on behalf of the CEBS Group, thanked the Secretariat for its hard work and efforts to organize the Information Session and for bringing experienced speakers to share their knowledge and experience in the protection of GUI, Icon and Typeface/Type Font Designs. The Delegation considered that the session had been a



good opportunity to help finding solutions to advance the Committee's work in that area and to provide adequate and effective protection to GUI, Icon and Typeface/Type Font Designs. Convinced that a comprehensive analysis of the current situation would facilitate a solution for the adequate protection of GUIs, the Delegation concluded by stating that it looked forward to the outcome of the discussions.

25. The Delegation of China, expressing its gratitude to the Secretariat for the organization of the Information Session and to the speakers for their presentations, considered that the session had enabled the Committee to know more about the experiences and needs of users in different countries. Noting that the current system was facing challenges, the Delegation highlighted the need to take active measures to meet such challenges, so as to improve the intellectual property system.

26. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked WIPO Member States and NGOs for their additional input to the questionnaire, as well as the Secretariat for the preparation of a revised analysis of the returns to the questionnaire contained in document SCT/37/2 Rev. and the organization of the Information Session. Considering that the Information Session had been a fruitful exercise, the Delegation held the view that the Committee had gained good insights on practices in different jurisdictions and had heard interesting experiences from relevant stakeholders, which would provide valuable input for the Committee's subsequent discussions on the issue. While recalling that, during the last SCT session, the European Union and its member states had appreciated that there was much common ground in the approaches taken on various issues addressed in the updated analysis of the replies to the questionnaire, the Delegation nonetheless noted that a number of areas with some divergences had been identified. Those divergences remained relevant also on the basis of the revised analysis in document SCT/37/2 Rev. The Delegation observed notably considerable differences in relation to additional or special requirements for the representation of GUI and icon designs appearing temporarily and the question of whether protection was granted regardless of the product. The Delegation also observed a non-uniform tendency among jurisdictions concerning the eligibility of subject matter for protection and the scope of protection of GUI and icon designs. Recognizing the economic importance of ensuring adequate protection for new technological designs, the Delegation expressed its openness to consider further work on the topic, which could be regarded as one of the most forward-looking fields of intellectual property.

27. The Delegation of France, expressing its gratitude to the Secretariat for the excellent organization of the Information Session, the Offices' Representatives for having shared their practices concerning GUI, Icon, Typeface/Type Font Designs, and the users' associations for having shed light on their expectations and experience, highlighted the constructive nature of the exchanges on practices within the Committee. While recognizing that a video was a possible way to represent GUIs and icons, as it enabled seeing the sequence of movements, the Delegation recalled that many Offices of European Union member states did not accept the filing of videos because of technical reasons. In order to maintain the constructive spirit resulting from the information sharing, the Delegation proposed presenting, at the next session of the SCT, the European Union common practice in relation to the graphical representation of designs. That practice dealt with the applicable requirements for the graphical representation of designs, namely the use of visual disclaimers and of various types of views, and the representation of industrial designs against a neutral background. The Delegation added that said practice also provided applicants with recommendations to better represent their designs and indicated quality standards applied by offices concerning applications filed electronically or in paper form. Finally, aligning itself with the statement by the Delegation of the European Union, the Delegation expressed the hope to positively contribute to future discussions on industrial designs.

28. The Representative of INTA, associating itself with the delegations having congratulated the panels of the Information Session, considered that said session had been very informative and useful. Declaring that users, and INTA members in particular, would definitely welcome further exploration of the protection of GUIs and icons, the Representative was of the view that two questions had emerged from the Information Session: firstly, the Representative wondered whether the link between a GUI or icon and the article or product showing the design was still needed and, if so, to what extent. Secondly, the Representative considered that SCT members should, to the extent possible, avail themselves of the new technologies at all stages of the process of filing, examination, publication, and searching for those subjects of protection.

29. The Delegation of the United States of America, thanking the participants and the Secretariat for the very informative and constructive Information Session, declared that it had gained knowledge of both offices' and users' perspectives. Expressing its gratitude to the Delegation of France for its follow-up, the Delegation lent its support to its proposal aiming at presenting the European Union practice with respect to GUIs and the accommodation of new technologies with audiovisual materials. In this respect, the Delegation also expressed its interest in hearing from other delegations using technologies that accept transitional image files in moving picture files, beyond paper static image files. Turning to the Information Session, the Delegation underlined the importance of those types of designs, which, as pointed out by the Japan Patent Office (JPO), were currently statistically among the most prevalent types of designs. The Delegation was of the view that there was no reason to provide less protection for them than would be afforded to designs embodied in a physical product. Echoing the statement made by the Representative of INTA, the Delegation considered that the Committee would benefit from further discussions and information on the questions concerning, on the one hand, the link between a GUI or icon and the article or product showing the design and, on the other hand, the way to accommodate new technologies at all stages in relation to filing, examination, publication, searching and registration.

30. The Delegation of South Africa thanked the Secretariat for the organization of the Information Session, which had been enriching with respect to various complicated subject matters. Pointing out that the session had shed some light on the practices of offices in relation to the protection of GUIs and icons, the Delegation observed that there were diverging views on the means of protection and the interpretation of legislations concerning the protection of GUIs and icons. Reporting that South Africa had enacted a law containing provisions for the protection of logos, the Delegation stated, however, that the question of the enforcement of such provisions was still to be decided by the courts, given the requirements for a design to be an article of manufacture and to be multiplied through an industrial process. Considering that the SCT should be conscious of the distinction between various arrangements - namely patents, trademarks, designs and copyrights - the Delegation expressed concerns as to the confusion that could be caused by the intersections of various protection regimes. The Delegation expressed its commitment to discussing those issues more deeply in the future.

31. The Delegation of Uganda, thanking the Secretariat for having organized the Information Session, declared that it had gained a good insight on GUIs and the best way to protect them. In its opinion, the discussions had highlighted the existence of convergence in some areas. Reporting that the Industrial Property Act of Uganda provided for the protection of GUIs, the Delegation indicated that there was a need to better understand the Act and its impact on SMEs.

32. The Chair noted the SCT's satisfaction with the Information Session on GUI, Icon, Typeface/Type Font Designs and its desire to continue discussing the topic.

33. As next steps, the Chair requested the Secretariat to:
- prepare a document summarizing the main points emerging from the Information Session, with all presentations made at the Information Session to be included as an Annex;
  - invite Member States and accredited NGOs to propose aspects of GUI, Icon and Typeface/Type Font Designs on which further work would be desirable, and compile all such proposals in a document, for consideration by the SCT at its next session;
  - include on this agenda item, for the next session of the SCT, a presentation, by the Delegation of France, of the European Union “Convergence Programme 6: Graphical Representation of Designs”.

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

34. The Chair referred to documents SCT/35/2 and 3 and to the decision of the 2017 WIPO General Assembly.

35. The Representative of OAPI, pointing out that the draft treaty did not contain a definition of industrial designs, wondered whether a minimum definition could be possible and whether the definition of “applicant” could be clarified. The Representative also considered that the words “details concerning” in the titles of the draft Regulations were superfluous.

36. The Chair, observing that no other delegation wished to take the floor, recalled that “the [2017] WIPO General Assembly decided that, at its next session in 2018, it will continue considering the convening of a diplomatic conference on the DLT, to take place at the end of the first half of 2019”.

37. The Chair concluded that, while the DLT would remain on its Agenda, the SCT should abide by the decision of the General Assembly.

*Update by Member States on the Digital Access Service (DAS) for Priority Documents*

38. The Secretariat recalled that, at the previous SCT session, certain delegations had declared that they had been taking steps towards the implementation of the DAS for industrial design priority documents and that the Chair had concluded that the Committee would continue to take stock of the progress made in that regard at its future sessions.

39. The Delegation of the United States of America recalled that the DAS was already being used by some countries, including the United States of America, in the utility patent context. In its view, the benefits of the DAS in that context would also have benefits in the design context. Reporting that the DAS was not yet fully implemented in the United States of America for industrial designs, the Delegation announced that its IT/IP project aimed at starting using the service in June or July 2018. The Delegation was confident that, at that point, the USPTO would be able to send priority documents, if requested, to other countries. That would imply, in practice, that, where an applicant who had filed a first application in the United States of America subsequently filed another application in another jurisdiction, the Office of that jurisdiction would be able to request priority documents to the USPTO through the DAS. The USPTO would then send them automatically, without the user’s involvement, other than the provision of an access code. Sharing its optimism with the Committee and hoping that, shortly

after using the DAS to send priority documents, the USPTO would also be able to receive them, the Delegation expressed its interest in hearing other Members States' plans with respect to the DAS for industrial design priority documents.

40. The Chair, observing that the use of the DAS for patent priority documents was extremely useful for both offices and users, said that he was looking forward to progressing in the fields of industrial designs and trademarks. Expressing the hope to see the DAS' user community growing, the Chair noted with satisfaction that the DAS for industrial design priority documents would be operational in the United States of America by the middle of 2018.

41. The Delegation of the Republic of Korea, pointing out that all WIPO Member States should enhance conveniences for applicants and establish accessible design application and registration systems, considered that the DAS was in line with such obligation and expressed full support for its adoption in the industrial design context. Reporting that the Republic of Korea had revised its design law to introduce the DAS in design applications, with effect as from September 2017, and had finalized technical matters to facilitate the use of the service, the Delegation was pleased to announce that its country was ready to exchange priority documents through the DAS. Convinced that expanding the service to industrial design applications would benefit applicants all over the world, the Delegation expressed its eagerness to participate in further discussions on the matter.

42. The Delegation of Chile, valuing the initiative aiming at promoting the use of the DAS for industrial design and trademark priority documents, highlighted the DAS' key importance to making the registration process more effective and efficient. The Delegation reported that, since 2015, the ability to carry out trademark and design procedures online in Chile had brought flexibility to the process and had enabled the shortening of the registration timeline for trademarks and designs. Adding that, since 2012, all titles and certificates issued by the National Institute for Intellectual Property of Chile (INAPI) were generated and signed electronically, the Delegation considered that WIPO DAS was in line with the modernization objectives of its Office. Therefore, the Delegation expressed support for the DAS-related initiative.

43. The Delegation of Canada, lending its support to the DAS and its objectives, informed the Committee that, under the current regulations applicable in Canada, implementing the DAS was not possible. However, Canada was working towards implementing the Hague Agreement on the International Registration of Industrial Designs and was currently revising its regulations to allow the access to, and use of, the DAS. Expressing the hope that the regulations would be revised and finalized next year, along with the Hague System implementation process, the Delegation announced its aim to use the DAS in early 2019.

44. The Delegation of China, expressing support for the extension of the DAS to industrial design applications, was convinced that it would facilitate the applicants' tasks and reduce their burdens. Reporting that the State Intellectual Property Office of China (SIPO) had already worked on that topic and had had a very good feedback, the Delegation expressed its readiness to share its Office's experience with other offices.

45. The Delegation of the Russian Federation, stating that its national Office was currently considering the possibility of joining the DAS for patent priority documents, announced that a federal law on the ratification of the Geneva Act of the Hague Agreement on the International Registration of Industrial Designs had been ratified in October 2017. Expressing the hope to deal with international applications next year, the Delegation indicated that its country was trying to speed up the procedure to join the DAS.

46. The Delegation of Japan, lending its support to the expansion of the DAS to industrial designs, observed that the service would enable applicants to skip the submission of priority documents when filing design applications. Claiming priority in the DAS-participating offices would reduce the costs linked to the filing of applications overseas. Stressing the need to expand the scope of use of the DAS and increase the number of participating offices, the Delegation indicated that, in Japan, adjusting both the legal framework and the computer systems was essential to participate in the System. In that regard, the Delegation reported that the Japan Patent Office (JPO) had been conducting the necessary work on both aspects, towards its participation in the DAS in the field of industrial designs.

47. The Delegation of Australia, recalling that the DAS was currently used in Australia for patent application priority documents, declared that it fully appreciated that the DAS could be extended to other intellectual property rights, to remove existing burdens on offices and applicants when accessing priority documents, if required to confirm a priority claim. While recognizing the potential benefit to users of its involvement in the DAS, the Delegation informed the Committee that regulatory, technical and organizational changes could potentially delay the participation of IP Australia in the extension of the DAS to other intellectual property rights.

48. The Representative of INTA, thanking the Delegations of Australia, Canada, Chile, China, Japan, the Republic of Korea, the Russian Federation and the United States of America for having highlighted the interest of the DAS for users of industrial property systems, expressed the hope that the steps taken by some countries to implement the DAS in the industrial design area would be concrete in a near future and that other countries would join. The Representative added that the extension of the DAS to trademarks would also be very much welcomed.

49. The Delegation of the United States of America, as regards the use of the DAS in relation to the Hague System, recalled that the Hague Working Group had anticipated the use of the DAS by Member States and had amended the Administrative Instructions in order to foresee the provision of the access code in applications under the Hague Agreement. While noting that, so far, nobody used the DAS in relation to the Hague System, the Delegation was of the view that one of the Hague System's benefits could be for small and medium-sized entities to be able to file internationally in many different jurisdictions, without the need to obtain expensive counsel or to go through burdensome procedures to submit priority documents. However, the Delegation observed that, currently, if an international application claiming priority and designating the United States of America was filed under the Hague System, the applicant still had to file a certified copy of priority documents in the United States of America, as if it had filed its application directly with the USPTO. Pointing out that the DAS could alleviate that burden and make the Hague System more efficient, the Delegation requested information on the plans of the International Bureau regarding the use of the DAS in the context of the Hague System.

50. The Secretariat explained that, in the context of the Hague System, the DAS was relevant in two different situations. The first related to the possibility to claim priority in an international application under the Hague System. The Secretariat recalled that the Hague System's legal framework did not require the filing of priority documents in support of such a claim, whereas the filing of priority documents could be a formality requirement under the law of certain designated Contracting Parties. Hague applicants were however spared from having to comply with that formality, which was one of the benefits of the international procedure. Nonetheless, because there would always be cases where, from a substantive point of view, the filing of priority documents became necessary to preserve the applicant's rights in a designated Contracting Party, the Hague Registry had always been championing the DAS in bilateral discussions or in the context of ID5. In that regard, the Secretariat recalled that, already in 2013, for the third session of the Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs, the Hague Registry had issued an invitation to member Offices to consider joining the DAS. At that time, the Chair of the Hague Working Group had concluded that "it was premature for the Offices of Contracting Parties to consider

committing themselves to the uploading and retrieval of priority documents via DAS". Observing that the situation had evolved since, the Secretariat highlighted the recent announcement by the Korean Intellectual Property Office (KIPO) about its readiness to use the DAS for industrial design priority documents. Pointing out that the DAS, being an exchange system, required the participation of a second member office in the system, the Secretariat noted that few Offices, among which the USPTO, were currently lining up to join the DAS. As the legislative framework of the Hague System was already in place, the Secretariat was pleased to inform the Committee that the International Bureau was taking the necessary steps to be technically ready, in the first quarter of 2018, to allow Hague applicants to rely on the DAS. However, as it would take time for the DAS network to grow, the Secretariat underlined the possibility for users to bypass entirely the issue of priority documents under the Hague System, by making their Hague applications their first application. Admitting that the Hague route was not always the best one and that, in certain cases, making a first domestic application was advantageous - particularly when, in the jurisdiction of origin, a substantive examination of design applications was carried out by the intellectual property office – the Secretariat, looking at the relatively high rate of international applications containing a priority claim, observed that many international applicants were not availing themselves of the possibility of designating their home jurisdiction and were thus not using the Hague System to its full potential. In most cases, therefore, international applicants had to provide priority documents. The Secretariat said that the second situation related to cases where the Hague application was the first application and, hence, served as a basis for claiming priority with regard to a subsequent national or regional application made outside the realm of the Hague Union. Although the International Bureau's ambition was to foster the geographical expansion of the Hague System, the Secretariat recognized that many applicants filing second applications with Offices not yet members of the Hague Union could be required to file certified copies of their Hague applications in support of their priority claim. In this respect, the Secretariat confirmed that the International Bureau was also taking the necessary steps to upload Hague applications in the DAS in the course of 2018. The Secretariat announced that Hague users would then be able to enjoy the economical solution offered by the DAS in respect of Offices joining the DAS network before joining the Hague System.

51. The Chair noted with satisfaction that the International Bureau was taking the necessary measures to implement the DAS in the context of the Hague System in 2018.

52. The Delegation of the United States of America thanked the Secretariat for its work in the area under consideration, for the thorough information shared on that important topic and for the emphasis on the DAS attributes.

53. The SCT noted the progress in the implementation of the DAS for industrial designs by several delegations, as well as indications by other delegations that they were actively considering implementation in the near future.

54. While continuing to encourage a wider use of the DAS by Member States for both industrial designs and trademarks, the Chair concluded that the SCT would continue to take stock of the progress made in this regard at its future sessions.

## **AGENDA ITEM 5: TRADEMARKS**

### *Protection of Country Names Against Registration and Use as Trademarks*

55. Discussions were based on documents SCT/32/2, SCT/37/3 Rev. and SCT/38/2.

56. The Delegation of the European Union, speaking on behalf of the European Union and its member states, shared the view that it was important to ensure effective protection of country names and that there were legal means in place to secure appropriate protection in national legislations. In this regard, the work carried out in the Committee so far had not revealed the need for additional action other than awareness raising, which should focus in particular on the availability of grounds for refusal or invalidation of trademarks containing country names and on the possibility of addressing the relevant issues in trademark examination manuals. At the same time, the Delegation noted calls for further work on this issue and remained open to paving the way for greater transparency of national practices. In order to further explore the implications of diverging solutions currently in place and to mutually explain the various rationales, the European Union and its member states proposed that the Committee consider the possible merits of organizing an information session dedicated to the protection of country names both in the physical and digital environment, including the DNS.

57. On behalf of the CEBS Group, the Delegation of Georgia thanked the Secretariat for the compilation of approaches described in document SCT/37/3 Rev., identifying different practices and possible areas of convergence regarding the protection of country names against registration and use as trademarks. The Group expressed appreciation for the work of the Member States and the information provided in the document, which could be used to further advance the discussions. The Group also took note of the analysis of the comments of Member States and possible areas of convergence, identified in document SCT/38/2. The Group looked forward to constructive discussions, with a view to finding convergences among the rules and practices of different Member States on the issue of country name protection. The Group also remained open for discussions on possible Areas of Convergence Nos. 1, 2, 5 and 6.

58. The Delegation of Senegal, speaking on behalf of the African Group, thanked the Member States who had provided their comments on possible areas of convergence, and observed that document SCT/38/2 sought to describe trends and additional concepts which were contained in the comments and gave an overview of the support provided to each area of convergence. The document covered some interesting points relating, in particular, to the official names of States, translations and transliterations of country names, descriptive marks from a geographical point of view, and cancellation and opposition procedures. Underlining the fact that the document showed differences in the law and practice for protecting the names of countries against their registration and use as trademarks, the Group was hopeful that the areas of convergence envisaged would produce the expected results. In addition, noting that the analysis excluded from its scope Areas of Convergence Nos. 3 and 4, the Group said that those areas could be integrated in due course. In conclusion, the African Group remained ready to engage constructively in discussions on all issues.

59. The Delegation of Indonesia expressed the wish to see progress towards consensus on an acceptable work program on the protection of country names, pointing out that, based on the examples and experiences shared within the Committee, country names were not offered sufficient protection. The Delegation reaffirmed its commitment to join the discussion so that the Committee could develop a general recommendation for a more effective protection of country names.

60. The Delegation of Iceland said that it was extremely pleased to hear that many delegations shared an understanding of the importance of ensuring effective protection for country names. Discussion on the protection of country names against registrations as trademarks or in the DNS system was far from being just theoretical. The Delegation, recalling the Iceland case, which revolved around the registration of the country name "Iceland" in the European Union for a large number of goods and services, observed that the proceedings on the case were still ongoing and would be for some time. Indicating that Iceland had had to allocate considerable time and resources in order to protect its country name against trademark registrations all over the world, the Delegation highlighted the importance of legal means to

respond to an abuse in the registration of a country name, adding that such legal means were, in one way or the other, present in most countries. Nevertheless, as already highlighted during the last session, the Delegation held the view that the differences in practices related to the registration of country names complicated the task.

61. The Delegation of Switzerland, underlining the fact that the analysis of the comments put forward by the Secretariat showed that most of the countries agreed on priority areas of convergence, regretted that Areas of Convergence Nos. 3 and 4 were not considered as priorities, especially as they were closely linked to Areas Nos. 5 and 6. The Delegation was of the view that it was necessary to clarify certain practices as previously stated by the European Union and its member states. In particular, it would be useful to know how Offices determined whether a term was geographical and how important that determination was. Observing the existence of an agreement on the importance of the issue of country names, the Delegation believed that the time was ripe for a more concrete use of the results achieved by the Committee on the subject. To that end, both documents prepared by the Secretariat so far, and the revised Jamaican proposal supported by the Swiss Delegation, provided an excellent basis for work. For the future, the Delegation stated that it was necessary to continue the work on the protection of country names in the Committee and supported the statement made by the European Union and its member states requesting the holding of an information session on the issue.

62. The Chair called on delegations to give their comments on Areas of Convergence Nos. 1, 2, 5 and 6.

63. The Delegation of China noted that an important divergence still remained under possible Area of Convergence No. 1, the "Notion of country name". The Delegation observed that during the examination process, examiners would have difficulties to deal with some kinds of country names, in particular the translation and the transliteration of a country name, as examiners could not know all such translations or transliterations. On possible Area of Convergence No. 6, "Use as a mark", the Delegation said that if such use deceived the public, legal means should be made available and should not be limited to the area of trademark law. In the Delegation's view, unfair competition law should also be made available.

64. The Delegation of Chile highlighted the importance of the topic and the work of the Committee on the subject. The Delegation said that in Chile, the trademark legislation forbade expressly the registration of country names or their abbreviations. In that sense, Chile went beyond the Paris Convention. The practice of the Intellectual Property Office of Chile considered country names as descriptive of the origin of the goods or services. Therefore, they were considered as lacking distinctive character when applied for as a trademark without any other distinctive element. The Delegation explained that a few years ago, the words "Swiss tools", alongside a white cross on a red background in a square, had been applied for in class 8. The Chilean Office had refused the trademark application because, although it contained a figurative element, the main element consisted of the name of a State and a sign used to indicate the origin of the products. The decision had however been revoked by the Court of Appeal, which had considered that what was prohibited was the registration as a trademark of a country name, isolated or as a unique term, which was not the case in the application under consideration. As a result, the Chilean Office had had to adjust its criteria and accept marks containing country names together with stylized images of their flags and emblems. However, the Office included a comment or observation at the moment of granting the registration, to clarify that the protection of the whole did not grant protection to the name of the country on its own. The Delegation believed that an appropriate way of looking at the issue should take into account the promotion and protection of nation brands, which were the positioning element of a country on the basis of the different characteristics of each State, in connection with the geography, tradition, culture, gastronomy and all the values of each country. With regard to document SCT/38/2 on the way forward, the Delegation proposed that the Committee should



agree to continue the exchange of information on the basis of points 1, 2, 5 and 6, and that countries should be invited to present their national practice, so that the Secretariat could have an appropriate basis to draw up conclusions which were more solid. The Delegation finally encouraged other countries, including Chile, to still send their comments.

65. The Delegation of Iran (Islamic Republic of), associating itself with the statement delivered by the Delegation of Indonesia on behalf of the Asian and the Pacific Group, indicated that the inconsistent protection of country names at an international level was a shortcoming in the international intellectual property system. The Delegation continued to believe that the protection of country names was extremely important, as those names could be successfully used in country brand schemes that would add value to products and services through the use of marks, especially in developing countries. Referring to document SCT/38/2, the Delegation noted that the majority of Member States shared the same position concerning possible Areas of Convergence Nos. 1, 2, 5 and 6 and seemed to agree that appropriate legal means should be made available to prevent the registration and use of country names as trademarks.

66. The Delegation of El Salvador said that the law of El Salvador did not allow for the registration as a trademark of the name of a country, or of the abbreviations and symbols corresponding to a State. However, Salvadorian law did not include the notion of common use, and the Delegation would appreciate having more information on such notion. The Delegation added that there was a harmonization manual of registration criteria for Central America and the Dominican Republic, with examples concerning the prohibition and random registration of country names as trademarks. The Delegation said that it would share the manual with the Committee to inform future discussions on the topic.

67. The Delegation of the United States of America, while expressing its appreciation on the work made in document SCT/38/2, said that it was unclear what further information that document added to the discussions. The Delegation underlined the fact that not all comments had been reflected in the document and that no modification had been made in the text of the areas of convergence. In the Delegation's view, the current text did not reflect any convergence. Concerning Area of Convergence No. 1, the Delegation agreed that a country name could be considered a geographic term, but could also be considered a non-geographic term, depending on the context in which it was used. With respect to Area of Convergence No. 2, the Delegation wondered what would happen if a country name was applied for as a trademark and had acquired distinctiveness over a long history of use as a geographical indication. The Delegation observed that it would agree to refuse it when it was descriptive, but if it was a geographical indication then it would actually be registered as a trademark. Thus, the Delegation could not agree on this area of convergence, and wondered whether it could be changed to read: "where the use of the name is non distinctive or incapable of distinguishing". On Area of Convergence No. 6, the Delegation was concerned that the proposed drafting had gone beyond the scope of Article 10*bis* of the Paris Convention. It potentially set up countries and governments as interested parties for the purposes of unfair competition, and the Delegation wondered whether Member States wanted to be considered as an interested party. The Delegation, suggesting to cut off the text after "likely to deceive the public", expressed the view that it would make more sense to discuss how to evaluate the geographic significance of a mark, rather than common national practices. The Delegation, recalling the previous information session on nation branding, country names and the DNS, requested clarity as regards the topics that would be discussed during the proposed information session on country names at the next session of the SCT.

68. The Delegation of Norway, supporting the statement made by the Delegation of the United States of America, did not see convergence among Member States in the proposed text at this point. As the comments made in its submission were not necessarily reflected in document SCT/38/2, the Delegation took this opportunity to restate the most important aspects of its arguments. In its opinion, for the proposed text of the areas of convergence to have

adequate value as guidance to States, users of the trademark system and consumers, the scope of possible Area of Convergence No. 1 should be narrowed down. The Delegation also considered that possible Area of Convergence No. 2 should reflect that a trademark that consisted of, or contained, a country name might be refused if it was perceived as a descriptive indication by the relevant public. Such a clarification would also take into account the concept of acquired distinctiveness that, although rarely, could also apply to trademarks containing country names. Furthermore, the Delegation said that document SCT/38/2 did not mention the aspect of use of country names in collective trademarks. The system of collective trademarks was an important instrument for associations wanting to indicate to the public and control that the products of its members had a certain quality. Consequently, exceptions to the general rule not to register a descriptive sign existed and should be reflected in the text. Regarding possible Area of convergence No. 6, the Delegation drew attention to the fact that the text covered all uses of country names, not only as trademarks. As was evident from document WIPO/Strad/INF/7, use of a country name might, under national law, be regulated by different sets of legislation, for instance, trademark laws, laws against unfair competition or consumer protection laws. The Delegation believed that the proposed text touched upon several concepts covered by the text of the Paris Convention and appeared as an attempt to merge them, without fully reflecting the content of any of them, and might also interfere with the law or duties of government bodies on other areas than trademark law. Accordingly, the Delegation of Norway was of the opinion that the proposed text, in its present form, might create more confusion than clarity.

69. The Delegation of Australia held the view that country names should not be used in an inappropriate or misleading way in trademarks and that provisions under national law should be sufficient to provide for protection against such inappropriate use. After considering the comments made by members and the analysis of those comments in document SCT/38/2, and appreciating the information provided by members on this issue, the Delegation expressed its support for the statements made by the Delegations of Norway and the United States of America. The Delegation echoed the concerns made previously about the sheer breadth of terms that would need to be taken into account if Area of Convergence No. 1 remained as currently worded. In relation to Area of Convergence No. 2, the Delegation sought this opportunity to expand on the concern it had expressed at SCT/37 about its current wording. In Australia, there was no category of trademarks that would be considered non-registrable if considered descriptive. If consumer perception was that a trademark consisted of a term that signified a geographic place name, then that trademark would be considered misleading/not capable of distinguishing. The issue was one of consumer perception. If the use of a geographic place name, in the context, signified something other than the geographic place itself, it was possible to achieve registration. To be clear, if the applicant could demonstrate that a geographic term had acquired a secondary meaning, lost its geographic significance and become capable of distinguishing, it could be registrable. The Delegation suggested to approach the issue using well established TRIPS language and stated that a trademark was non-registrable if considered "not capable of distinguishing". The Delegation added that another way of addressing this concern would be to discuss the considerations involved in examination. For example, when did a geographical place name retain its geographical significance and what factors were involved in this, or when could the term acquire a secondary meaning? The Delegation supported the view that work on examination guidelines could be useful.

70. The Delegation of Jamaica, in relation to possible Area of Convergence No. 1, commended those Member States that had a specific provision in their national law, which allowed for the refusal of registration of trademarks consisting of the official name of a State. However, the Delegation noted that most Member States did not have such a provision in their trademark law. The Delegation said that most Member States who had submitted comments agreed with the wording of possible Area of Convergence No. 1. It also took note of the concerns raised by a few Member States that the variations of country names might not be known to trademark examiners and/or the general public, and commended the use of the

ISO 3166 standard published by the International Organization for Standardization (ISO), which defined codes for the names of countries, dependent territories, special areas of geographical interest, and their principal subdivisions. The Delegation also said that, similar to the database of official symbols and armorial bearings of States maintained by WIPO pursuant to the Paris Convention, a centralized database of names of States established by WIPO would be useful for reference by intellectual property offices in the course of examination of trademark applications. The Delegation suggested that Member States officially communicate to WIPO their country name and its various formulations for which protection was sought. The Delegation was also of the view that issues of translation and transliteration could be addressed by requiring that applicants submit translations and transliterations where the trademark was not in the language(s) used by the intellectual property office. That was already an existing practice of many intellectual property offices. In relation to possible Area of Convergence No. 2, the Delegation agreed that trademarks consisting solely of a country name should be refused where the use of that name was descriptive of the place of origin of the goods or services. The Delegation was of the view that trademarks consisting solely of a country name (that is, a simple word mark) should be refused *per se* as being descriptive, unless the registration of the mark was applied for by the State itself or an entity authorized by the State as part of a nation branding scheme. It did not subscribe, however, to the opinion that a trademark containing a country name was considered descriptive only when the country was recognized as a place of production of the goods and services, and believed that any use of a country name in a trademark might be considered descriptive of the goods and services. If the mark was not descriptive, it would then be considered misleading, unless the registration was applied for by the country concerned or an entity authorized by the country as part of a nation branding scheme. It was for that reason that Article 2 of the Draft Joint Recommendation contained in Jamaica's Revised Proposal in document SCT/32/2 proposed that Member States agree to "prevent use of indications consisting of, or containing country names in relation to goods or services which do not originate in the country indicated by the country name." Similarly, Article 3(1) of Jamaica's Draft Joint Recommendation deemed trademarks which contain a country name in relation to goods or services which did not originate in the named country as marks which conflicted with country name protection. For that reason, Article 3(1) provided that: "Irrespective of the goods and/or services for which a mark is used, is the subject of an application for registration, or is registered, that mark shall be deemed to be in conflict with protection for a country name where the mark, or a part thereof, consists of or contains a country name, and the mark is being used or intended to be used in relation to goods or services which do not originate in the country indicated by the country name." The Delegation noted the use of disclaimers and endorsements by some Member States and explained that the Jamaica Intellectual Property Office (JIPO) also used disclaimers and limitations to ensure that uses of country names were neither misleading nor deceptive. The Delegation endorsed that approach as also affording a means of protection of country names. In its view, that approach would provide better protection for country names than what was currently applied in most Member States and would not require any change in existing law, but only in interpretation. However, recognizing that there were exceptional circumstances, under most national trademark laws, in which a trademark with a country name in relation to goods or services not originating in the named country could nonetheless be registered, Jamaica's Draft Joint Recommendation proposed language that would provide some agreed parameters for those exceptional circumstances. Articles 6 and 7 of the Draft Joint Recommendation sought to outline those exceptional circumstances. In relation to possible Area of Convergence No. 5, the Delegation agreed that the grounds for refusal in possible Areas of Convergence Nos. 2, 3 and 4 should constitute grounds for invalidation of registered trademarks and also grounds of opposition. Judging from the high number of respondent States which agreed with this possible area of convergence, the Delegation observed that there seemed to be a general consensus and convergence in that regard. In that respect, Article 8 of Jamaica's Draft Joint Recommendation provided possible language which sought to ensure that the grounds for refusing the registration of a trademark as being descriptive, non-distinctive, generic, misleading, deceptive or false, should apply to opposition and invalidity proceedings as well. In

relation to possible Area of Convergence No. 6, the Delegation agreed that appropriate legal means should be made available for interested parties to prevent the use of country names when such use was likely to deceive the public. It also concurred with the view that indications of geographical origin, which enjoyed a particular reputation, should benefit from additional protection against use for goods and services of a different origin. In that respect, Articles 3(2), 3(3) and 3(4) of Jamaica's Draft Joint Recommendation provided possible language which sought to assure Member States of the right to oppose the registration or to request the invalidation, by a competent authority, of the registration of a mark which consisted of, or contained, a country name in relation to goods or services which did not originate in the country indicated by the country name. Since the thirty-second session of the SCT in 2014, Jamaica had placed on the table a Draft Joint Recommendation of the Paris Union and the WIPO General Assembly for the protection of country names, so as to facilitate within the SCT more focused discussion on possible solutions to the problem. The Delegation reiterated that the aim of the proposed Draft Joint Recommendation, contained in document SCT/32/2, was not to prescribe rules that intellectual property offices must follow, nor to create additional obligations, but to establish a coherent and consistent framework to guide intellectual property offices and other competent authorities and international traders, in their use of trademarks, domain names and business identifiers which consisted of, or contained, country names. The Delegation therefore encouraged Member States to again review the Draft Joint Recommendation with a view to agreeing possible language for the effective protection of country names against registration and use as trademarks. The Delegation hoped that, through constructive engagement, the SCT could agree on a Joint Recommendation for the protection of country names, which reflected the consensus of WIPO Member States.

71. The Delegation of the Russian Federation, on Area of Convergence No. 2, stated that under Russian legislation, it was previously not allowed to register as a trademark a descriptive indication of the place of production. However, in 2014, following an amendment of the Russian legislation, it had been provided that descriptive signs could be registered as trademarks if they had acquired distinctiveness as a result of their use. Therefore, the Delegation declared that it was prepared to continue discussing that area of convergence as well as all the others.

72. The Representative of OAPI said that OAPI did not protect trademarks which contained official emblems of a State. The Delegation observed that there were two alternatives with regards to country names. Either the trademark contained the name of a country and the product originated from that country, in which case the trademark was descriptive, or the product did not originate from that country, in which case the trademark would be misleading. The Delegation said that these two elements were not examined, since a trademark, which is descriptive initially, could acquire distinctiveness through use. The Delegation added that the basis on which OAPI refused the registration of trademarks consisting of country names was that the name of a country was for a collective use and that it was dangerous to allow a company to appropriate what was in the public domain.

73. The Delegation of Iceland, observing that the protection of country names was highly relevant to Member States, said that it agreed with the definition of country name as set out in possible Area of Convergence No. 1. It also expressed the view that a WIPO centralized database for examiners deserved a further look. Noting the concerns of some delegations with regard to the fact that it might be difficult, during examination, to explore possible linguistic versions of a country name, the Delegation considered that the ISO 3166 standard could serve as a basis in determining the most common versions of country names in the languages most used in international trade. Regarding Area of Convergence No. 2, the Delegation welcomed the fact that Member States' comments demonstrated that country names were generally refused, as they were considered descriptive and non-distinctive. With respect to the comments provided by Member States on the possibility of a country name acquiring distinctiveness through use before registration, taking into account the knowledge of the local consumer public, the Delegation considered that such assessments were subjective. In the Delegation's view, it

was a matter of principle that the public at large deserved the right to accurately identify the type of goods and services sold through the use of generic words. Given the importance the Delegation attached to keeping country names in the public domain, the Delegation was of the view that country names should not be able to acquire distinctiveness through use, and any assessment as to the knowledge of the local consumer public needed to be measured against the reasonable interest for the public of a given country to have access to the use of its country name.

74. The Delegation of the Republic of Korea held the view that, in possible Area of Convergence No. 1, identifiers which could be used as a country name were too broad and should be narrowed down. With regard to possible Area of Convergence No. 2, the Delegation pointed out that it was necessary to protect the rights of current users that might legitimately use country names in trademarks which had become well known and had recognition and distinctiveness in the domestic market.

75. The Chair, thanking the delegations who had answered the questionnaire and contributed to the useful debate on the issue of country names, called delegations for an exchange of views on the structure of the proposed information session at the next session of the SCT.

76. The Delegation of the European Union, speaking on behalf of the European Union and its member states, stated that it wished to show its openness to further work on the issue under consideration. Given the comments made by other Member States, especially as regards examination practices, the Delegation felt that it would be useful to examine the different practices and divergences in order to learn from them.

77. The Delegation of Iceland lent its support to the proposal made by the European Union and its member states.

78. The Delegation of Iran (Islamic Republic of) was of the view that there was a necessity to continue the discussion on the protection of country names as a matter of priority and to develop a legal framework to prevent registration or use of country names as trademarks. With regard to the next step, noting that the current analysis concerned only possible Areas of Convergence Nos. 1, 2, 5, and 6, the Delegation believed that action needed to be undertaken with regard to Areas Nos. 3 and 4, in order to have a full and clear picture on the matter. Concerning the proposal to have an information session on the matter at the coming session of the SCT, the Delegation considered it favorably.

79. The Delegation of the Republic of Moldova, highlighting the interest of discussing the experiences and practices of different countries, supported the idea of a half-day information session.

80. The Chair proposed to have a break to discuss the structure of the Information Session.

[Suspension]

81. The Chair thanked the delegations for their contribution in elaborating with the Secretariat the structure of the Information Session on country names.

82. The Delegation of Indonesia agreed on the proposed format and expressed its interest in sharing its country's practices and listening to other practices.

83. Replying to a question by the Delegation of Indonesia, the Chair indicated that the Information Session would be organized for half a day.

84. The Delegation of Iran (Islamic Republic of) proposed to leave the discussion open on Areas of Convergence Nos. 3 and 4, which had not been discussed, in order to have a better understanding of the situation.
85. The Chair stated that Areas of Convergence Nos. 3 and 4 would remain open for discussion at the next session of the SCT.
86. The Delegation of Indonesia asked whether Member States would be invited to send comments on Areas of Convergence Nos. 3 and 4.
87. The Secretariat explained that document SCT/38/2 contained an analysis of all the comments received on all the areas of convergence.
88. The Delegation of the European Union, speaking on behalf of the European Union and its member states, said that it did not believe that the work on Areas of Convergence Nos. 3 and 4 would result in a consensus approach. Therefore, it questioned the need to pursue the analysis of those areas.
89. The Delegation of Indonesia, stating that Indonesian trademark law had changed recently, said that it might want to send comments on Area of Convergence No. 3.
90. Following an exchange of views, the Chair requested the Secretariat to organize a half-day information session in the form of a moderated roundtable at SCT/39, addressing the examination by offices of trademarks consisting of, or containing, country names and taking into account the perspectives of users, under the following structure:  
(i) Introduction; (ii) Specific legislation; (iii) Public domain *versus* distinctiveness; (iv) Word mark *versus* composite mark; (v) Perception of relevant consumer/secondary meaning/what is considered a country name; (vi) Disclaimers/Limitations of goods and services/Exceptions/Other practices; and (vii) Concluding remarks.
91. Certain delegations stated that possible Areas of Convergence Nos. 3 and 4 should also be included in the analysis of document SCT/38/2 at the current stage, while others requested that the document remain unchanged.
92. The Chair indicated that document SCT/37/3 Rev. remained open for further submissions and other contributions by delegations.

*Update on Trademark-Related Aspects of the Domain Name System (DNS)*

93. Discussions were based on document SCT/38/3.
94. The Delegation of Switzerland thanked the Secretariat for the update contained in the document and expressed support for continued monitoring and updates by the Secretariat in the DNS. The Delegation of Switzerland expressed concern regarding ICANN's review of Rights Protection Mechanisms in the DNS. The Delegation also noted that ICANN's structure favors registration interests to the detriment of protecting country names and geographical indications, and further noted that this was unlikely to change insofar as the UDRP was concerned. The Delegation expressed further concerns regarding country names and geographical indications sought by private entities in ICANN's future DNS expansion.
95. On behalf of the CEBS Group, the Delegation of Georgia thanked the Secretariat for maintaining this item on the agenda and for the continued update on trademark related aspects of the DNS. Given the challenges posed by the global nature of the Internet, the CEBS Group expressed gratitude for rights protection mechanisms developed through the WIPO Internet

Domain Name Processes and encouraged ICANN's cooperation in reviewing such mechanisms. The CEBS Group expressed appreciation for WIPO's continued administration of efficient dispute resolution mechanisms to address abusive domain name registrations and for its monitoring of reviews of the same. The CEBS Group also expressed support for the Secretariat's policy work and for keeping Member States informed of future developments.

96. The Delegation of France also thanked the Secretariat for the update contained in the document. The Delegation of France expressed its shared concerns with the Delegation of Switzerland regarding ICANN's review of Rights Protection Mechanisms, including the UDRP. The Delegation of France noted the importance of seeking to protect country names and geographical indications in the DNS, particularly against the interests of commercial speculators.

97. The Delegation of the United States of America thanked the Secretariat for the update contained in the document. The Delegation of the United States of America noted that, with regard to the review of the UDRP, the system works well for the protection of trademarks, but recalled that there are those within the ICANN community who may want to see changes made to the UDRP. The Delegation of the United States of America noted that the proposed inclusion in the UDRP of more identifiers could raise concerns for the current positive functioning of the UDRP for trademarks. The Delegation of the United States of America also noted that geographic identifiers were to be discussed by the Governmental Advisory Committee at the ICANN meeting in Abu Dhabi, United Arab Emirates, and that the Delegation had representatives attending ICANN to advance its interests on such issues. The Delegation urged other Member States to do the same, and raised questions about the relation of conversations at ICANN and the SCT.

98. The Representative of INTA expressed support for the Secretariat regarding the review of Rights Protection Mechanisms in the DNS, and noted the importance of the UDRP for a well-functioning and reliable DNS. The Representative expressed concern regarding the potential erosion of the UDRP's effectiveness in ICANN's review, noting that such a review may begin within the next year. The Representative further noted that in a recent survey of its members, the UDRP ranked in first place in terms of effectiveness among Rights Protection Mechanisms in the DNS. The Representative urged the Member States to work with the ICANN Governmental Advisory Committee to ensure that the benefits of the UDRP were well understood, asserting that governmental support is essential in the preservation of the UDRP as an effective means to adjudicate clear cases of cybersquatting and bad faith domain name registration. The Representative noted that WIPO had maintained and should continue to maintain an efficient and fair international forum for the resolution of such cases.

99. The Chair highlighted the importance of continued monitoring of DNS developments.

100. The SCT considered document SCT/38/3 and the Secretariat was requested to keep Member States informed of future trademark-related developments in the DNS.

## **AGENDA ITEM 6: GEOGRAPHICAL INDICATIONS**

101. Discussions were based on documents SCT/30/7, SCT/31/7, SCT/31/8 Rev.7 and SCT/34/6.

102. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the WIPO Secretariat for organizing the interesting and fruitful information session at the last meeting, which it considered a good basis for the exchange of views on geographical indication protection systems, in particular on geographical indications in the DNS. Thanking the Chair for its proposal for taking forward the work on that matter, the

Delegation stressed the fact that the work program, in compliance with the SCT mandate, should not aim to interpret or revise the provisions of the Lisbon Agreement or the Geneva Act. Furthermore, the work program should avoid duplication of work already completed by the SCT or covered by existing treaties and intellectual property systems administered by WIPO, and should not focus on general topics, such as the definition of the subject matter of protection. The European Union and its member states considered that some elements in the Chair's proposal concerning the application and registration of geographical indications were of a procedural nature and therefore too remotely related to the proposals to be discussed in the Committee in accordance with the decision of the 2015 General Assembly. The Committee should marshal its time and resources to add value to its work, and for that purpose, focus on specific topics, such as a substantive discussion on geographical indications in the DNS, a crucial topic of concrete concern for stakeholders. The Delegation believed that the discussion during the previous session, addressing directly that issue for the first time in the last decade, set the scene for further in-depth discussions. Welcoming the item concerning the DNS, the Delegation announced that it would suggest amendments to the Chair's proposal, aimed at clarifying that the work should focus on the protection of geographical indications, country names and geographical terms on the Internet and in the DNS, including under TLDs, gTLDs and ccTLDs, based on the proposal contained in document SCT/31/8 Rev.7. Expressing concern regarding the first item in the Chair's proposal, which seemed rather general in scope, the Delegation held the view that it should instead be more concrete and targeted on specific issues. In its opinion, the current text would result in an inventory of existing systems, which were already known to the Committee, as shown in documents SCT/8/4 and SCT/9/4, dating back to 2002. The SCT should thus rather develop a targeted questionnaire aimed at collecting useful information, to allow meaningful discussions for the benefit of stakeholders. The Delegation stressed the fact that the preparation of the questionnaire should be exclusively driven by WIPO Members. The European Union and its member states believed that adjustments should be made to the text of the Chair's proposal, in particular in the wording of items (i) and (ii). In this regard, the Delegation suggested inserting specific references to geographical indications in each of the indents under point (i) of the proposal, and proposed the addition of a reference to "enforcement mechanisms". The Delegation also noted that the timeline needed to be modified to take into account the time passed since previous discussions on the proposal and to ensure that the agreed timetable corresponded to practical needs. The European Union and its member states expressed support to some amendments proposed by the Delegation of Switzerland at the previous session, and said it would submit its own textual suggestions to be considered in further discussions during the meeting, hoping that they would facilitate discussions aimed at adopting a work plan for the continuation of discussions on the protection of geographical indications in the SCT.

103. The Delegation of Iran (Islamic Republic of), reiterated that the work of the SCT should not in any way interpret or review the provisions of the Lisbon Agreement and the Geneva Act of the Lisbon Agreement. It expressed the view that the Committee should abide by its mandate and avoid duplication of the work already completed or covered by existing treaties and intellectual property systems administered by WIPO. The Delegation observed that the Chair's proposal on future work on the issue was a good basis for further discussion, and expressed appreciation for the proposal made by the Delegation of the European Union on behalf of the European Union and its member states.

104. The Delegation of Georgia, speaking on behalf of the CEBS Group, took note of the different proposals on the table, including the Chair's proposal on the compilation of a list of questions, which would constitute a good basis for a questionnaire for future work on geographical indications in the SCT. Such approach could initiate an exchange of views on the features, experiences and practices of the different national and regional geographical indication protection systems and the protection of geographical indications on the Internet and geographical indications and country names in the DNS. The CEBS Group expressed support for the proposal tabled by the Delegation of the European Union on behalf of the European



Union and its member states, which in its view complemented and amended the Chair's proposal. The Group looked forward to amendments to the Chair's proposal accordingly, for a balanced work plan on geographical indications in the SCT.

105. The Delegation of Brazil pointed out that discussions on geographical indications, in particular on the protection of country and geographic names in the DNS, were a matter of growing interest to Brazil. The Delegation considered that the Chair's proposal was in line with the interests of its country. The Delegation observed that the assignment of new generic top level domains should be based on the principle of protection of geographic names. It held the view that those names should thus be protected against undue registration when they involved peoples, communities, historic heritages and traditional social networks whose public interest could be affected by the assignment to private entities of gTLDs directly referring to those regions. The Delegation recalled that in 1999, the Report of the First WIPO Internet Domain Name Process focused on issues relating to trademarks and domain names. The recommendations from that Report had been largely applied by ICANN, and had resulted in the implementation of a successful administrative system for resolving domain name disputes involving trademarks, as well as a system of best practices for domain name registration authorities, designed to avoid such conflicts. However, a number of issues, among which geographical indications, indications of source or geographical terms, had been identified as being outside of the scope of the First WIPO Report, thus requiring additional work. The Report of the Second WIPO Internet Domain Name Process, published in 2001, addressed those outstanding issues. The Delegation quoted one of the main conclusions of this second report: "the Report produces considerable evidence of the widespread registration of the names of countries, places within countries and indigenous peoples as domain names by persons unassociated with the countries, places or peoples. However, these areas are not covered by existing international laws and a decision needs to be taken as to whether such laws ought to be developed". Following those recommendations presented to WIPO Member States and to ICANN, the ICANN Governmental Advisory Committee (GAC) elaborated in 2007 principles regarding new gTLDs and recommended that ICANN avoid country, territory or place names, unless authorized by the relevant governments or public authorities. The Delegation held the view that, despite some progress, the issue of the protection of geographical indications and geographical sources in the DNS had not yet been properly addressed by ICANN. In that context, the question was not whether there was enough protection for geographical indications and geographical sources, and the Delegation considered that it was clearly not the case, but rather a question of how to develop and implement a balanced proposal that took into account the competing interests between countries, domain name registrants and general Internet users.

106. The Delegation of Iceland thanked the Chair for the proposal contained in document SCT/38/4 and expressed support for the compilation of a list of questions. The Delegation also said that it wished to be added to the list of States supporting the proposal set forth in document SCT/31/8 Rev.7.

107. The Delegation of Indonesia, speaking in its national capacity, expressed great interest to see progress on those issues in the Committee. Indonesia was very proud of its long-standing and respected culinary practices, artisanal tradition and local expertise underlying product names. The Delegation believed that geographical indications constituted a way of protecting those practices, while at the same time boosting economic development, contributing to job creation, increasing the incomes of farmers, as well as improving the social strengths of communities. Considering that document SCT/38/4 was largely in line with its interests regarding the way in which the Committee could move forward under that agenda item, the Delegation looked forward to studying the new proposal made by the Delegation of the European Union. Expressing interest in understanding and learning from the different protections adopted by various Member States, the Delegation called for a more focused way forward in the first part of document SCT/38/4. Concerning the protection of geographical

indications on the Internet and geographical indications, geographical terms and country names in the DNS, the Delegation expected the SCT to address the registration and use of domain names infringing protected geographical indications and geographical terms, and hoped that the Committee would agree on a balanced work plan.

108. The Delegation of Switzerland took note of the wish expressed by a number of delegations to exchange information on national and regional systems for the protection of geographical indications. As had been the case in previous sessions of the Committee, Switzerland would contribute constructively to the discussions on that topic. The Delegation informed the Committee that, on September 18, 2017, Switzerland had submitted to the WTO TRIPS Council an update of its replies to the questionnaire on examination, in accordance with Article 24(2) of the TRIPS Agreement relating to geographical indications. Considering that the Chair's proposal (document SCT/38/4) was a very good basis for work, the Delegation said that the amendment proposed by the Delegation of the European Union, subject to a detailed consideration of the text, seemed promising to reach consensus for substantive work in the Committee. Switzerland supported the position expressed by the Delegation of Brazil concerning the importance of the protection of domain names, other geographical names and geographical indications in the DNS, and more generally on the Internet. The work plan adopted by the Committee should thus take those different questions into account in a balanced way.

109. The Delegation of Pakistan stated that discussions on geographical indications should be given time and consideration and should be dissociated from the related discussions in other fora. The Delegation attached great importance to the protection of agriculture and traditional assets under the geographical indication system. Pakistan expressed appreciation for the Chair's proposal, as it elaborated on the experiences and practices of different national and regional geographical indication protection systems and the protection of geographical indications on Internet. The Delegation believed that the compilation of questions and replies relating to different aspects of the topic would provide insight and knowledge to proceed further under the agenda item. Pakistan wished to reiterate its support for the proposal contained in document SCT/31/8 Rev.7, and encouraged the extension of the Uniform Domain Name Dispute Resolution Policy (UDRP) to include geographical indications, which, like trademarks, were signs that gave information about the origin of products. The reason was that domain names had become very important in the digital era as they built a link between trade and consumers. It was therefore necessary to develop mechanisms to limit the misappropriation of geographical indications and country names as domain names. The Delegation supported the proposed study, considering that it would highlight the need and significance of the inclusion of geographical indications in the DNS.

110. The Delegation of Chile said that it valued and supported the Chair's proposal, which touched on one of the main substantive elements of the three existing initiatives concerning geographical indications, in line with the mandate of the Committee. It reaffirmed that, in Chile, geographical indications constituted a significant aspect of intellectual property, which added value to the industry. The Delegation believed that an exchange of information on geographical indications would help understanding the specific characteristics of national systems and how they related to other topics, such as their protection on the Internet and in the DNS, as well as their connection with geographical terms and country names. In that context, the Delegation considered as a valuable source of information the outcome of the International Symposium on Geographical Indications organized by WIPO in Yangzhou, China, in 2017, which brought together 290 delegates among which representatives of national administrations, producers and intellectual property specialists. Chile supported the Chair's proposal contained in document SCT/38/4, and urged the Committee to move forward with tangible action as proposed therein. The Delegation was committed to participating actively in the development of the questionnaire proposed by the Chair, and stated that it would consider carefully any requests circulated by the Secretariat related thereto.

111. The Delegation of Iran (Islamic Republic of) said that it supported the amendments proposed by the Delegation of the European Union, on behalf of the European Union and its member states.

112. The Chair, noting that a number of Delegations had expressed support for his proposal, invited interested Member States to hold informal consultations on the basis of document SCT/38/4, also taking into consideration the amendments proposed by the Delegation of the European Union, on behalf of the European Union and its member states.

[Suspension]

113. Resuming the session, the Chair informed the Committee of the outcome of the informal consultations and read the proposed SCT workplan on geographical indications, as follows:

“The Information Session, which took place on March 28, 2017, provided useful information on (i) the features, experiences and practices of the different national and regional geographical indication protection systems, and (ii) the protection of geographical indications on the Internet, and geographical indications and country names in the Domain Name System (DNS): gTLDs and ccTLDs. The Information Session was a good basis to initiate an exchange of views on points (i) and (ii) referred to above.

Following discussions at the thirty-seventh and thirty-eighth sessions of the SCT, and in order to share more information and foster a constructive dialogue on those two topics, the Chair requests the Secretariat to compile a list of questions proposed by Members and Intergovernmental Intellectual Property Organizations with observer status<sup>†</sup>, for consideration by the SCT, which could form the basis of a questionnaire to be distributed to Members and the aforementioned Organizations<sup>‡</sup>. The list of questions will be structured according to the following topics:

I. The national and regional systems that can provide a certain protection to geographical indications:

- Basis for protection (sign/indication subject of protection, goods/services covered, etc.).
- Application and registration (entitlement to file, content of application, grounds for refusal, examination and opposition, ownership/right of use, requests for protection from other countries...).
- Scope of protection, right to take action and enforcement.

II. The use/misuse of geographical indications, country names and geographical terms on the Internet and in the DNS, including TLDs, gTLDs and ccTLDs (examples, cases, mechanisms to address misuse, basis for protection where appropriate).

The Chair also requests the Secretariat to describe the existing state of play of geographical indications, country names and other geographical terms in the DNS, with a view to further discussions on the matter by the SCT. Such description is to be added to the update on the DNS provided to the SCT.

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<sup>†</sup> *i.e.*, organizations which, under their constituting treaty, have responsibility for the protection of industrial property rights.

<sup>‡</sup> Review of multilateral agreements is outside the scope of this exercise.

The planning for the above is as follows:

- In November 2017, the Secretariat will send a circular inviting Members and the aforementioned Organizations to propose the questions referred to above.
  - Members and the aforementioned Organizations are to propose their questions to the Secretariat by February 6, 2018.
  - The Secretariat will issue, by the end of February 2018, a document compiling the questions, for consideration of the SCT at its thirty-ninth session.
  - The SCT will consider, at its thirty-ninth session, the above-mentioned document, with a view to issuing the questionnaire to Members and the aforementioned Organizations, and, at its fortieth session, a document prepared by the Secretariat compiling all the replies to the questionnaire. Furthermore, at its thirty-ninth session, the SCT will consider the above-mentioned description of the state of play.”
114. The SCT adopted its workplan on geographical indications, as reflected above.

#### **AGENDA ITEM 7: ADOPTION OF THE SUMMARY BY THE CHAIR**

115. The SCT approved the Summary by the Chair as presented in document SCT/38/5.

#### **AGENDA ITEM 8: CLOSING OF THE SESSION**

116. The Delegation of Costa Rica, speaking on behalf of GRULAC, thanked the Chair for his work during plenary sessions and informal meetings, the Secretariat for the preparation of the documents and the meeting, and the interpreters who allowed the Committee to achieve good results. The Delegation expressed appreciation for the efforts invested in the successful Information Session on GUI, Icon and Typeface/Type Font Designs. Given the importance accorded by GRULAC to the protection of country names, the Group looked forward, with a special interest, to the information session on that topic and expressed its readiness to discuss future work at the next meeting of the Committee. Concerning the proposed work program on geographical indications, GRULAC was very pleased to see convergence on that issue and hoped to continue working constructively on the workplan.

117. The Delegation of Georgia, speaking on behalf of the CEBS Group, thanked the Chair for his skillful guidance through the work of the Committee, the Secretariat for the valuable effort invested in the preparation of the meeting and all the Delegations for their constructive statements, which enabled progress on different issues under the SCT Agenda and the adoption of future work on geographical indications. The Delegation believed that the week had proved to be an opportunity for both formal and informal dialogue, which had helped to move forward the common objectives. Thanking the Secretariat for its invested efforts in organizing the information session and bringing qualified speakers to share the experiences and practices of protection of GUI, Icon and Typeface/Type Font Designs, the Delegation said that the session had been a perfect possibility to help find solutions to advance the work of the Committee. The Delegation looked forward to the next session to address the agenda items in a constructive way.

118. The Delegation of Senegal, speaking on behalf of the African Group, reiterated its gratitude and congratulations to the Chair for the significant results achieved during the session of the SCT, amongst which the agreement between Member States on the organization, at the next session, of an information session on examination by offices of trademarks consisting of, or

containing, country names, taking into account the perspectives of users, as well as on a work program on geographical indications. The Group expressed satisfaction for the constructive spirit of cooperation that had prevailed during the meeting and hoped that it would continue to prevail in the next sessions of the SCT, as well as within WIPO. The African Group was committed to bringing its positive contribution to enable various offices to have appropriate tools to carry out their work. The Delegation finally thanked the Secretariat for its professionalism, as well as the interpreters who had facilitated informal and plenary sessions, and all delegations which had contributed to the discussions.

119. The Delegation of the European Union, speaking on behalf of the European Union and its member states, congratulated the Chair for making the meeting such a success. Achieving consensus on a future work program on geographical indications, a prize that had eluded the Committee for so long, was a significant milestone in the work of the SCT. Stressing the fact that the Committee had also made good progress on furthering understanding on the issues surrounding country names, the Delegation looked forward to the information session at the next meeting and trusted that it would be as useful as the information session on GUI, Icon and Typeface/Type Font Designs. The Delegation wished to salute the particularly constructive spirit shown by all delegations in the discussions, and highlighted the role of the Secretariat, whose excellent work had allowed proceedings to run smoothly, and the interpreters and translators for contributing to a better understanding.

120. The Delegation of Indonesia, speaking on behalf of the Asian and the Pacific Group, thanked the Chair for his leadership in guiding the meeting towards a successful conclusion. Congratulating the Secretariat and the members of the Committee for the fruitful Information Session on GUI, Icon and Typeface/Type Font Design, the Delegation expressed appreciation to all the speakers in that session. The Delegation stated that the Group remained committed to the work of the Committee. Noting the conclusion that the Committee should abide by the decision of the General Assembly with regard to the convening of a diplomatic conference on the DLT, the Asian and the Pacific Group was optimistic that a mutually agreed outcome would be reached regarding that matter at the next feasible opportunity. Welcoming the next step on the protection of country names and hoping that the planned information session would guide the Committee to move forward regarding that issue, the Group expressed its commitment and looked forward to participating actively. The Asian and the Pacific group also commended all Member States in arriving to a mutually acceptable outcome on the work plan on geographical indications. The Delegation considered that the SCT had made much progress and hoped that this could be sustained in future meetings as well as in other WIPO Committees. In conclusion, the Asian and the Pacific Group thanked regional groups, regional coordinators and all Member States, as well as the Chair and the Secretariat for the preparation of the meeting, including conference services and the interpreters.

121. The Delegation of China thanked the Secretariat for its work, which enabled a smooth meeting, and the Member States for their active participation. Considering that the meeting had achieved positive results during the week, the Delegation was committed to participating actively in the future work of the Committee concerning the protection of country names, geographical indications and other topics.

122. The Delegation of Brazil thanked the Chair, the Vice-Chairs and the Secretariat for the extremely positive and productive session, sharing the view that important advancements had been made, especially on geographical indications. Considering the session as one of the smoothest and calmest sessions he had participated in, the Delegate personally attributed that outcome to a large extent to the constructive spirit of all delegations and to the Chair's leadership and problem-solving approach. The Delegation hoped for similar productive discussions on trademark-related matters at the next session. The Delegation also said that, without prejudice to the ongoing discussions in the Committee, Brazil believed that there was room for initiating a constructive and meaningful dialogue on other dimensions of trademarks.

Willing to contribute to that matter, the Delegation announced that Brazil would submit at the next session a proposal on trademarks and SMEs. Brazil believed that all Member States could benefit from sharing experiences on national programs regarding the expansion of a trademark culture among SMEs, in line with recommendation 4 of the DA, and that this would contribute to building a more inclusive, balanced and effective intellectual property system, a desire shared by all Member States.

123. The Representative of OAPI thanked the Chair and the Secretariat for the perfect organization of the work of the Committee. Considering that the meeting had been extremely enriching, the Representative said that the Committee's work would enable OAPI to improve its protection procedures, be it for geographical indications, trademarks or industrial designs. Pointing out that many issues remained to be addressed, the Representative expressed the hope that the next session would give the opportunity of dealing with other interesting questions.

124. The Chair thanked all the delegations, which had committed to the common target of moving forward with the work. Considering that the week had been successful, the Chair said that the work gave value to the Committee, since the issues dealt with were of interest to all users of the industrial property system. Recalling the discussions during informal meetings that referred to small farmers in Morocco, the Chair believed that they had to be kept in mind as users of the intellectual property system. The week had been an example of constructive spirit allowing concrete results. Holding the view that other results could be reached in the future, the Chair thanked all the delegations and the Secretariat, as well as the conference staff and the interpreters.

125. The Chair closed the session on November 2, 2017.

[Annexes follow]



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**SCT/38/5**  
**ORIGINAL: ENGLISH**  
**DATE: NOVEMBER 2, 2017**

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

**Thirty-Eighth Session**  
**Geneva, October 30 to November 2, 2017**

### **SUMMARY BY THE CHAIR**

*adopted by the Committee*

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

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

127. Mr. David Muls (WIPO) acted as Secretary to the SCT.

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

128. The SCT adopted the draft Agenda (document SCT/38/1 Prov.).

#### **AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-SEVENTH SESSION**

129. The SCT adopted the draft Report of the thirty-seventh session (document SCT/37/9 Prov.).

## **AGENDA ITEM 4: INDUSTRIAL DESIGNS**

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

130. The Chair recalled that “the [2017] WIPO General Assembly decided that, at its next session in 2018, it will continue considering the convening of a diplomatic conference on the Design Law Treaty (DLT), to take place at the end of the first half of 2019”.

131. The Chair concluded that, while the DLT would remain on its agenda, the SCT should abide by the decision of the General Assembly.

### *Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*

132. The Chair noted the SCT’s satisfaction with the Information Session on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs and its desire to continue its discussions of the topic.

133. As next steps, the Chair requested the Secretariat to:

- prepare a document summarizing the main points emerging from the Information Session, with all presentations made at the Information Session to be included as an Annex;
- invite Member States and accredited NGOs to propose aspects of Graphical User Interface (GUI), icon and typeface/type font designs on which further work would be desirable, and compile all such proposals in a document, for consideration by the SCT at its next session; and
- include on this agenda item, for the next session of the SCT, a presentation, by the Delegation of France, of the European Union “Convergence Programme 6: Graphical Representation of Designs”.

### *Update by Member States on the Digital Access Service (DAS) for Priority Documents*

134. The SCT noted the progress in the implementation of the DAS for industrial designs by several delegations, as well as indications by other delegations that they are actively considering implementation in the near future.

135. While continuing to encourage a wider use of the DAS by Member States for both industrial designs and trademarks, the Chair concluded that the SCT would continue to take stock of the progress made in this regard at its future sessions.

## **AGENDA ITEM 5: TRADEMARKS**

### *Protection of Country Names Against Registration and Use as Trademarks*

136. The SCT considered documents SCT/32/2, SCT/37/3 Rev. and SCT/38/2.

137. Following an exchange of views, the Chair requested the Secretariat to organize a half-day information session in the form of a moderated roundtable at SCT/39, addressing the examination by offices of trademarks consisting of, or containing, country names and taking into account the perspectives of users, under the following structure: (i) Introduction; (ii) Specific legislation; (iii) Public domain *versus* distinctiveness; (iv) Word



mark *versus* composite mark; (v) Perception of relevant consumer/secondary meaning/what is considered a country name; (vi) Disclaimers/Limitations of goods and services/Exceptions/Other practices; and (vii) Concluding remarks.

138. Certain delegations stated that possible Areas of Convergence Nos. 3 and 4 should also be included in the analysis in document SCT/38/2 at the current stage, while others requested that the document remain unchanged.

139. Document SCT/37/3 Rev. remains open for further submissions and other contributions by delegations.

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

140. The SCT considered document SCT/38/3 and requested the Secretariat to keep Member States informed of future developments in the DNS.

**AGENDA ITEM 6: GEOGRAPHICAL INDICATIONS**

141. The SCT adopted its workplan on geographical indications, as reflected in the Annex.

**AGENDA ITEM 7: SUMMARY BY THE CHAIR**

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

**AGENDA ITEM 8: CLOSING OF THE SESSION**

143. The Chair closed the session on November 2, 2017.

[Annex follows]

## SCT Workplan on Geographical Indications

November 1, 2017

The Information Session, which took place on March 28, 2017, provided useful information on (i) the features, experiences and practices of the different national and regional geographical indication protection systems, and (ii) the protection of geographical indications on the Internet, and geographical indications and country names in the Domain Name System (DNS): gTLDs and ccTLDs. The Information Session was a good basis to initiate an exchange of views on points (i) and (ii) referred to above.

Following discussions at the thirty-seventh and thirty-eighth sessions of the SCT, and in order to share more information and foster a constructive dialogue on those two topics, the Chair requests the Secretariat to compile a list of questions proposed by Members and Intergovernmental Intellectual Property Organizations with observer status<sup>1</sup>, for consideration by the SCT, which could form the basis of a questionnaire to be distributed to Members and the aforementioned Organizations<sup>2</sup>. The list of questions will be structured according to the following topics:

### III. The national and regional systems that can provide a certain protection to GIs

- Basis for protection (sign/indication subject of protection, goods/services covered, etc.).
- Application and registration (entitlement to file, content of application, grounds for refusal, examination and opposition, ownership/right of use, requests for protection from other countries...).
- Scope of protection, right to take action and enforcement.

### IV. The use/misuse of geographical indications, country names and geographical terms on the Internet and in the DNS, including TLDs, gTLDs and ccTLDs (examples, cases, mechanisms to address misuse, basis for protection where appropriate).

The Chair also requests the Secretariat to describe the existing state of play of geographical indications, country names and other geographical terms in the DNS, with a view to further discussions on the matter by the SCT. Such description is to be added to the update on the DNS provided to the SCT.

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<sup>1</sup> *i.e.*, organizations which, under their constituting treaty, have responsibility for the protection of industrial property rights.

<sup>2</sup> Review of multilateral agreements is outside the scope of this exercise.

The planning for the above is as follows:

- In November 2017, the Secretariat will send a circular inviting Members and the aforementioned Organizations to propose the questions referred to above.
- Members and the aforementioned Organizations are to propose their questions to the Secretariat by February 6, 2018.
- The Secretariat will issue, by the end of February 2018, a document compiling the questions, for consideration of the SCT at its thirty-ninth session.
- The SCT will consider, at its thirty-ninth session, the above-mentioned document, with a view to issuing the questionnaire to Members and the aforementioned Organizations, and, at its fortieth session, a document prepared by the Secretariat compiling all the replies to the questionnaire. Furthermore, at its thirty-ninth session, the SCT will consider the above-mentioned description of the state of play.

[End of Annex and of document]

[Annex II follows]



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**SCT/38/INF/1**  
**ORIGINAL : FRANÇAIS/ANGLAIS**  
**DATE : 2 NOVEMBRE 2017 / NOVEMBER 2, 2017**

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

**Trente-huitième session**  
**Genève, 30 octobre – 2 novembre 2017**

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

**Thirty-Eighth Session**  
**Geneva, October 30 to November 2, 2017**

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**LIST OF PARTICIPANTS**

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*prepared by the Secretariat*

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