

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

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COMPILATION OF QUESTIONS ON NATION-BRAND PROTECTION IN MEMBER STATES

Document prepared by the Secretariat

INTRODUCTION

1. At the forty-second session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), which was held in Geneva from November 4 to 7, 2019, the SCT considered the Proposal by the Delegation of Peru to Conduct a Survey on Nation-Brand Protection in Member States (document SCT/42/4), co-sponsored by the Delegation of Ecuador (document SCT/42/4 Rev.)
2. At the end of that session, the Chair of the SCT “concluded that:
 - the Delegation of Peru would send to the Secretariat, before December 31, 2019, a proposal for a draft questionnaire on nation-brand protection in Member States;
 - members were invited to send to the Secretariat, before December 31, 2019, questions they would like to include in the draft questionnaire;
 - the Secretariat was requested to compile all questions, for consideration of the draft questionnaire by the SCT at its next session” (see document SCT/42/8, paragraph 23).
3. In addition to the proposal for a *Draft Questionnaire for the Study on the Protection of Country Signs* by the Delegation of Peru, the Secretariat received questions from the following Member States: Australia, Brazil, Ecuador and Switzerland (4).

4. Annex I to the present document contains the draft questionnaire proposed by Peru. Annex II to the present document contains the questions received from Member States.

5. *The SCT is invited to consider the content of the present document.*

[Annexes follow]

DRAFT QUESTIONNAIRE FOR THE STUDY ON THE PROTECTION OF COUNTRY SIGNS PROPOSED BY PERU

I. INTRODUCTION

This questionnaire is intended to gather information on the treatment of “country signs”, also known as “nation brands”, in the Member States of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) of the World Intellectual Property Organization (WIPO).

Owing to the absence of a multilaterally accepted definition of a “country sign”, also known as a “nation brand”, for the purposes of this document it will be tentatively defined as a sign adopted by a State (usually a logo, symbol or emblem) that is used to support the implementation of policies intended to cultivate national identity and promote the image of a country, in particular to develop tourism, attract investments, promote exports, increase competitiveness and create or provide a favorable image of the culture, traditions and positive aspects of a country at both the national and international levels.

The proposed questionnaire is intended to gather information about the treatment in Member States of this kind of *sui generis* sign, and its development, recognition and protection in different jurisdictions.

The information obtained through this questionnaire should constitute a valuable resource for exploring options that comprehensively address the interests and needs of all WIPO Member States.

II. BACKGROUND

As the members of the SCT will be aware, Peru has submitted a proposal to this Committee, co-sponsored by the Delegation of Ecuador, that is intended to identify points of consensus or convergence at the international level in regard to the recognition and treatment of country signs and nation brands.

Many SCT members have adopted and have long used this kind of sign in various forms. The consequence of the absence of a harmonized international conceptual and normative framework has been that the treatment of country signs and nation brands differs from one country to another, and in many cases country signs and nation brands have not even been afforded a recognition that takes their *sui generis* nature into consideration.

This absence of a widespread recognition of country signs and nation brands in Member States has given rise to a range of legal treatments. As a result, their treatment varies widely between different jurisdictions and includes the following:

- treatment as a trademark, subject to registration requirements and possible opposition by third parties, maintenance and use obligations, and private defense and enforcement;
- treatment as a collective mark;
- treatment as a certification mark;
- treatment as a geographical indication;

- treatment as an official sign indicating control and warranty;
- treatment as a state emblem.

This variety of treatments does not permit there to be a consistent recognition or effective and economical protection of country signs and nation brands. SCT members may consider it appropriate to amend this situation by seeking converging options at the multilateral level that offer country signs and nation brands the best form of protection in the maximum number of jurisdictions.

The proposed questionnaire will enable the Committee to obtain more complete and up-to-date information on the practices of SCT members in regard to their own country signs and nation brands and those of other States. It is hoped that this information may, in turn, lead to a process of considering, conceptualizing and defining potential steps towards a minimum recognition and protection of country signs and nation brands by SCT members.

III. QUESTIONNAIRE

NOTE: This questionnaire relates only to country signs and nation brands that are national in scope. The questionnaire does not refer to signs, emblems, trademarks or logos used by political constituencies within States. In particular, this questionnaire does not concern signs used by cities, cantons, provinces or other political entities or areas within WIPO Member States.

Included in this questionnaire are signs with a national scope that are used by public or semi-public entities for the sectoral promotion or identification of activities of the State or national government, including, for example, activities adopted for national programs on tourism, specific products, ecology and other issues related to the country in question.

When the phrase “country sign” is used in the questionnaire, it refers to the sign adopted by a State (usually made up of a logo, symbol or emblem) used to cultivate national identity and promote the image of a country.

(1). Has your country, or any public or semi-public entity in your country, adopted any policy or developed any strategy intended to cultivate national identity or promote the country’s image, or are there plans to do so?

No Yes

(If “yes”, please continue with the questionnaire)

(2). In order to implement this policy or strategy to cultivate national identity or promote the country’s image, has any public or semi-public entity in your country adopted or do they use a sign, logo, symbol or emblem (a country sign here is as defined in the Introduction and Note to this questionnaire) as a visual instrument for those purposes, or do they plan to do so?

No Yes

If “yes”, please attach with this questionnaire a copy of the country sign (sign, logo, symbol or emblem) that has been adopted or is used in your country. If more than one country sign has been adopted or is used, please attach all such signs.

(3). Has the country sign adopted by or used in your country been replaced or modified in recent years? If possible, indicate the regularity of the replacements or modifications.

(4). Provide information on the authority or entity responsible for administration of the country sign in your jurisdiction. Include the name, type of entity (public, semi-public or private), connection to the State (public dependency, government licensee), website, etc.

(5). Indicate the national legislation, regulations, statutes or other rules related to the adoption, publication or other official act of recognition of the country sign (or signs) used in your jurisdiction.

(Attach the legislation, regulations or other rules for reference)

(6). In addition to regulations related to its adoption, publication or recognition, has the country sign been or is it protected, registered or filed for registration in your jurisdiction or in another country under any form or element of industrial property? If so, indicate which (for example, trademark, collective mark, certification mark, geographical indication, etc.).

(Attach the corresponding registration or certification, if relevant)

(7). If the country sign in your jurisdiction has been registered or filed for registration as a trademark in your country or in other countries, or before any regional trademark office, indicate for what type of products or services, under which classes of the international Nice Classification and in which countries or offices.

(8). Indicate whether the use of the country sign is subject to compliance with regulations, directives, statutes, manuals or other rules, or subject to licensing or prior authorization by a competent national authority in your jurisdiction.

(Attach the regulations, directives, statutes, manuals or other rules for reference)

(9). Indicate whether the country sign adopted or used in your country can be subject to licensing for use by third parties; for example, by companies wishing to use it in their products or advertising in activities at the national or international levels.

No Yes

(If “yes”, summarize the relevant provisions or attach the text of the applicable rules)

(10). Indicate whether your country has specific legislation, including at the constitutional level, on the definition or protection of **patriotic symbols** (armorial bearings, flags, official state seals, etc.).¹

No Yes

(If “yes”, attach the specific reference to the relevant rule(s))

(11). In your jurisdiction, can an individual use freely, or under certain conditions or requirements, a **patriotic symbol** of your country for commercial purposes, for example, related to a product, service or advertisement?

No Yes

(If “yes”, attach the text of the relevant rule(s) or legal and administrative decisions, in particular those referring to the conditions or requirements for such use.)

¹ In this instance, patriotic symbols are understood to be state signs that may be the same as or different to the country signs of the State in question.

(12). Indicate whether any sign adopted or used in your jurisdiction to cultivate national identity or promote the country's image (a country sign here is as defined in the Introduction and Note to this questionnaire) has been subject to an international communication and notification under the process provided for in **Article 6ter** of the Paris Convention for the Protection of Industrial Property, as a **State emblem** or as an **official sign indicating control and warranty**.

No Yes

(If "yes", indicate the reference number of the emblem or sign included in the WIPO database for Article 6ter ("Article 6ter Express") or attach a copy of the relevant electronic publication in this database.)

(13). If the sign referred to in question 12 has been communicated through the procedure under Article 6ter of the Paris Convention, indicate whether this communication was subject to any observation from a national authority of any country.

No Yes

(If "yes", and where possible, please attach a copy of the observation received.)

[Annex II follows]

QUESTIONS RECEIVED FROM MEMBER STATES

QUESTIONS PROPOSED BY AUSTRALIA

(1). Does your country have a nation brand?

- If yes, what is your country's nation brand?
- Does your nation brand have an owner?
 - If yes, who is the owner?
- What was the policy rationale behind the development of your country's nation brand?
- How was your country's nation brand developed?
- To what goods and/or services does your nation brand apply?
- If your country name does not appear in your nation brand, why?

(2). Does your nation brand contain elements (e.g. emblems, flags, signs or hallmarks) that are otherwise protected, for example by Article 6ter or as a registered trademark?

(3). How do you protect your nation brand (e.g. trademark, tailored domestic law)?

- Can you describe any challenges with the way your country's nation brand is protected?
- Do you protect other countries' nation brands in your country?
 - If yes, how do you protect other countries' nation brands?

(4). Who can use your country's nation brand?

- How is the use permitted and monitored?
- Are users required to pay a fee to use the nation brand?
 - If yes, how much is the fee?
- How is the nation brand enforced?
- Who is responsible for enforcement?
- Do you protect your nation brand in other countries? If so, how?

QUESTIONS PROPOSED BY BRAZIL

(1). Do Members have any official definition of nation brand?

- If yes, what is the official definition?

(2). Do members consider nation brand as an industrial property asset?

- (3). How do members protect nation brands?
- (4). Is it possible in any member state to reject an application for a product or service brand based on a preexistent nation brand?
- (5). For those members that protect nation brands, is the protection against misuse given both to the word element (the name of the country) and to the mixed presentation of the brand?
- (6). What is the relationship of nation brands and the broader brands and geographical indications systems?

QUESTIONS PROPOSED BY ECUADOR

- (1). What is the concept of a nation brand?
- (2). What is a nation brand used for?
- (3). What should the aims and benefits of a nation brand be?
- (4). Are there applicable regulations on the creation and registration of a nation brand, and, if so, in which countries?
- (5). What should a nation brand represent?

QUESTIONS PROPOSED BY SWITZERLAND

- (1). Have you notified one or more than one nation brands pursuant to Article 6*ter* of the Paris Convention?
 - If yes, did these notifications raise objections?
- (2). Can you describe instances in which nation brands that you have notified pursuant to Article 6*ter* of the Paris Convention were not sufficiently protected in other countries?
- (3). Has your office ever refused the registration of a mark containing a country name because of an emblem notified pursuant to Article 6*ter* of the Paris Convention?

[End of Annex II and document]