



Records of the Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

Geneva 2015

**WORLD INTELLECTUAL PROPERTY ORGANIZATION
(WIPO)**

RECORDS

**OF THE DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A NEW
ACT OF THE LISBON AGREEMENT FOR THE PROTECTION OF
APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL
REGISTRATION
GENEVA, 2015**

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EDITOR'S NOTE

The Records of the Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration (adopted as 'The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications') held in Geneva, from May 11 to May 21, 2015, contain the documents described below relating to that Conference which were issued before, during and after the Conference, as well as indexes to those documents.

The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and the Regulations Under the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications

(a) Text of the Geneva Act and the Regulations as adopted by the Diplomatic Conference

This part of the Records contains the final text – that is the text as adopted and signed – of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and the Regulations Under the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (pages 9 to 49).

(b) Text of the Basic Proposal as presented to the Diplomatic Conference

This part of the Records reproduces the draft of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and Regulations Under the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications as presented to the Diplomatic Conference (Basic Proposal) (pages 51 to 92).

(c) Comparison of the texts of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (of October 31, 1958, as revised at Stockholm on July 14, 1967, and as amended on September 28, 1979) and the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and the Regulations Thereunder (done at Geneva on May 20, 2015) (pages 93 to 125).

This part of the Records shows the changes between the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and the Regulations Thereunder, and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (of October 31, 1958, as revised at Stockholm on July 14, 1967, and as amended on September 28, 1979) (pages 127 to 154).

(d) Signatories of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications

In this part of the Records (page 155), a list of the signatories of the Act is reproduced.

(e) Final Act of the Diplomatic Conference

Page 157 of the Records contains the text of the Final Act of the Diplomatic Conference and a list of signatories of the Final Act.

Conference Documents

This part (pages 159 to 436) contains a list of two series of documents distributed before and during the Diplomatic Conference: mains series “LI/DC” (23 documents) and information series “LI/DC/INF” (4 documents).

Summary Minutes

This part (pages 437 to 653) contains the summary minutes of the sessions of the Plenary of the Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration and the Regulations Thereunder (pages 438 to 501) and Main Committees I and II of the Diplomatic Conference (pages 502 to 653).

Participants

This part lists the individuals who, in the Diplomatic Conference, represented Member Delegations (pages 656 to 671), Observer Delegations (page 672 to 700), Special Delegations (pages 701 to 702), Intergovernmental Organizations (page 703 to 704), Non-Governmental Organizations (page 705 to 708) and the World Intellectual Property Organization (page 709). This part also lists the Officers of the Diplomatic Conference and the Committees as well as the compositions of certain Committees (pages 710 to 713).

Indexes

The Records contain five different indexes (pages 715 to 747).

The first index (pages 717 to 726) lists by number, each Article of the Act and Rule of the Regulations under the Act, and indicates, under each of them, the pages where the text of the Article or Rule appears in these Records and those paragraphs of the summary minutes which reflect the discussion on the Article or Rule.

The second index (pages 727 to 731) is the alphabetical list of the “member delegations” on which the interventions made on their behalf can be found.

The third index (page 732 to 744) is the alphabetical list of the “observer delegations” on which the interventions made on their behalf can be found.

The fourth index (pages 745) is the alphabetical list of the “special delegations” on which the interventions made on their behalf can be found.

The fifth index (pages 746 to 747) concerns the President of the Conference and the Chairs of the Main Committees and the list of the International Bureau of WIPO participants on which the interventions made on their behalf can be found.

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**TEXT OF THE TREATY AND THE REGULATIONS
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ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS**

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Chapter I Introductory and General Provisions

Article 1 Abbreviated Expressions

For the purposes of this Act, unless expressly stated otherwise:

- (i) “Lisbon Agreement” means the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958;
- (ii) “1967 Act” means the Lisbon Agreement as revised at Stockholm on July 14, 1967, and amended on September 28, 1979;
- (iii) “this Act” means the Lisbon Agreement on Appellations of Origin and Geographical Indications, as established by the present Act;
- (iv) “Regulations” means the Regulations as referred to in Article 25;
- (v) “Paris Convention” means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised and amended;
- (vi) “appellation of origin” means a denomination as referred to in Article 2(1)(i);
- (vii) “geographical indication” means an indication as referred to in Article 2(1)(ii);
- (viii) “International Register” means the International Register maintained by the International Bureau in accordance with Article 4 as the official collection of data concerning international registrations of appellations of origin and geographical indications, regardless of the medium in which such data are maintained;
- (ix) “international registration” means an international registration recorded in the International Register;
- (x) “application” means an application for international registration;
- (xi) “registered” means entered in the International Register in accordance with this Act;
- (xii) “geographical area of origin” means a geographical area as referred to in Article 2(2);
- (xiii) “trans-border geographical area” means a geographical area situated in, or covering, adjacent Contracting Parties;

(xiv) “Contracting Party” means any State or intergovernmental organization party to this Act;

(xv) “Contracting Party of Origin” means the Contracting Party where the geographical area of origin is situated or the Contracting Parties where the trans-border geographical area of origin is situated;

(xvi) “Competent Authority” means an entity designated in accordance with Article 3;

(xvii) “beneficiaries” means the natural persons or legal entities entitled under the law of the Contracting Party of Origin to use an appellation of origin or a geographical indication;

(xviii) “intergovernmental organization” means an intergovernmental organization eligible to become party to this Act in accordance with Article 28(1)(iii);

(xix) “Organization” means the World Intellectual Property Organization;

(xx) “Director General” means the Director General of the Organization;

(xxi) “International Bureau” means the International Bureau of the Organization.

Article 2
Subject-Matter

(1) *[Appellations of Origin and Geographical Indications]* This Act applies in respect of:

(i) any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation; as well as

(ii) any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

(2) *[Possible Geographical Areas of Origin]* A geographical area of origin as described in paragraph (1) may consist of the entire territory of the Contracting Party of Origin or a region, locality or place in the Contracting Party of Origin. This does not exclude the application of this Act in respect of a geographical area of origin, as described in paragraph (1), consisting of a trans-border geographical area, or a part thereof.

Article 3
Competent Authority

Each Contracting Party shall designate an entity which shall be responsible for the administration of this Act in its territory and for communications with the International Bureau under this Act and the Regulations. The Contracting Party shall notify the name and contact details of such Competent Authority to the International Bureau, as specified in the Regulations.

Article 4
International Register

The International Bureau shall maintain an International Register recording international registrations effected under this Act, under the Lisbon Agreement and the 1967 Act, or under both, and data relating to such international registrations.

Chapter II
Application and International Registration

Article 5
Application

- (1) *[Place of Filing]* Applications shall be filed with the International Bureau.
- (2) *[Application Filed by Competent Authority]* Subject to paragraph (3), the application for the international registration of an appellation of origin or a geographical indication shall be filed by the Competent Authority in the name of:
 - (i) the beneficiaries; or
 - (ii) a natural person or legal entity having legal standing under the law of the Contracting Party of Origin to assert the rights of the beneficiaries or other rights in the appellation of origin or geographical indication.
- (3) *[Application Filed Directly]* (a) Without prejudice to paragraph (4), if the legislation of the Contracting Party of Origin so permits, the application may be filed by the beneficiaries or by a natural person or legal entity referred to in paragraph (2)(ii).
 - (b) Subparagraph (a) applies subject to a declaration from the Contracting Party that its legislation so permits. Such declaration may be made by the Contracting Party at the time of deposit of its instrument of ratification or accession or at any later time. Where the declaration is made at the time of the deposit of its instrument of ratification or accession, it shall take effect upon the entry into force of this Act with respect to that Contracting Party. Where the declaration is made after the entry into force of this Act with respect to the Contracting Party, it shall take effect three months after the date on which the Director

General has received the declaration.

(4) *[Possible Joint Application in the Case of a Trans-border Geographical Area]* In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may, in accordance with their agreement, file an application jointly through a commonly designated Competent Authority.

(5) *[Mandatory Contents]* The Regulations shall specify the mandatory particulars that must be included in the application, in addition to those specified in Article 6(3).

(6) *[Optional Contents]* The Regulations may specify the optional particulars that may be included in the application.

Article 6
International Registration

(1) *[Formal Examination by the International Bureau]* Upon receipt of an application for the international registration of an appellation of origin or a geographical indication in due form, as specified in the Regulations, the International Bureau shall register the appellation of origin, or the geographical indication, in the International Register.

(2) *[Date of International Registration]* Subject to paragraph (3), the date of the international registration shall be the date on which the application was received by the International Bureau.

(3) *[Date of International Registration Where Particulars Missing]* Where the application does not contain all the following particulars:

(i) the identification of the Competent Authority or, in the case of Article 5(3), the applicant or applicants;

(ii) the details identifying the beneficiaries and, where applicable, the natural person or legal entity referred to in Article 5(2)(ii);

(iii) the appellation of origin, or the geographical indication, for which international registration is sought;

(iv) the good or goods to which the appellation of origin, or the geographical indication, applies;

the date of the international registration shall be the date on which the last of the missing particulars is received by the International Bureau.

(4) *[Publication and Notification of International Registrations]* The International Bureau shall, without delay, publish each international registration and notify the Competent Authority of each Contracting Party of the international registration.

(5) *[Date of Effect of International Registration]* (a) Subject to subparagraph (b), a registered appellation of origin or geographical indication shall, in each Contracting Party that

has not refused protection in accordance with Article 15, or that has sent to the International Bureau a notification of grant of protection in accordance with Article 18, be protected from the date of the international registration.

(b) A Contracting Party may, in a declaration, notify the Director General that, in accordance with its national or regional legislation, a registered appellation of origin or geographical indication is protected from a date that is mentioned in the declaration, which date shall however not be later than the date of expiry of the time limit for refusal specified in the Regulations in accordance with Article 15(1)(a).

Article 7 *Fees*

(1) *[International Registration Fee]* International registration of each appellation of origin, and each geographical indication, shall be subject to payment of the fee specified in the Regulations.

(2) *[Fees for Other Entries in the International Register]* The Regulations shall specify the fees to be paid in respect of other entries in the International Register and for the supply of extracts, attestations, or other information concerning the contents of the international registration.

(3) *[Fee Reductions]* Reduced fees shall be established by the Assembly in respect of certain international registrations of appellations of origin, and in respect of certain international registrations of geographical indications, in particular those in respect of which the Contracting Party of Origin is a developing country or a least-developed country.

(4) *[Individual Fee]* (a) Any Contracting Party may, in a declaration, notify the Director General that the protection resulting from international registration shall extend to it only if a fee is paid to cover its cost of substantive examination of the international registration. The amount of such individual fee shall be indicated in the declaration and can be changed in further declarations. The said amount may not be higher than the equivalent of the amount required under the national or regional legislation of the Contracting Party diminished by the savings resulting from the international procedure. Additionally, the Contracting Party may, in a declaration, notify the Director General that it requires an administrative fee relating to the use by the beneficiaries of the appellation of origin or the geographical indication in that Contracting Party.

(b) Non-payment of an individual fee shall, in accordance with the Regulations, have the effect that protection is renounced in respect of the Contracting Party requiring the fee.

Article 8 *Period of Validity of International Registrations*

(1) *[Dependency]* International registrations shall be valid indefinitely, on the understanding that the protection of a registered appellation of origin or geographical

indication shall no longer be required if the denomination constituting the appellation of origin, or the indication constituting the geographical indication, is no longer protected in the Contracting Party of Origin.

(2) *[Cancellation]* (a) The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time request the International Bureau to cancel the international registration concerned.

(b) In case the denomination constituting a registered appellation of origin, or the indication constituting a registered geographical indication, is no longer protected in the Contracting Party of Origin, the Competent Authority of the Contracting Party of Origin shall request cancellation of the international registration.

Chapter III Protection

Article 9 Commitment to Protect

Each Contracting Party shall protect registered appellations of origin and geographical indications on its territory, within its own legal system and practice but in accordance with the terms of this Act, subject to any refusal, renunciation, invalidation or cancellation that may become effective with respect to its territory, and on the understanding that Contracting Parties that do not distinguish in their national or regional legislation as between appellations of origin and geographical indications shall not be required to introduce such a distinction into their national or regional legislation.

Article 10 Protection Under Laws of Contracting Parties or Other Instruments

(1) *[Form of Legal Protection]* Each Contracting Party shall be free to choose the type of legislation under which it establishes the protection stipulated in this Act, provided that such legislation meets the substantive requirements of this Act.

(2) *[Protection Under Other Instruments]* The provisions of this Act shall not in any way affect any other protection a Contracting Party may accord in respect of registered appellations of origin or registered geographical indications under its national or regional legislation, or under other international instruments.

(3) *[Relation to Other Instruments]* Nothing in this Act shall derogate from any obligations that Contracting Parties have to each other under any other international instruments, nor shall it prejudice any rights that a Contracting Party has under any other international instruments.

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

(1) *[Content of Protection]* Subject to the provisions of this Act, in respect of a registered appellation of origin or a registered geographical indication, each Contracting Party shall provide the legal means to prevent:

(a) use of the appellation of origin or the geographical indication

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

(ii) in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies or services, if such use would indicate or suggest a connection between those goods or services and the beneficiaries of the appellation of origin or the geographical indication, and would be likely to damage their interests, or, where applicable, because of the reputation of the appellation of origin or geographical indication in the Contracting Party concerned, such use would be likely to impair or dilute in an unfair manner, or take unfair advantage of, that reputation;

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

(2) *[Content of Protection in Respect of Certain Uses]* Paragraph (1)(a) shall also apply to use of the appellation of origin or geographical indication amounting to its imitation, even if the true origin of the goods is indicated, or if the appellation of origin or the geographical indication is used in translated form or is accompanied by terms such as “style”, “kind”, “type”, “make”, “imitation”, “method”, “as produced in”, “like”, “similar” or the like¹.

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

¹ Agreed Statement concerning Article 11(2): For the purposes of this Act, it is understood that where certain elements of the denomination or indication constituting the appellation of origin or geographical indication have a generic character in the Contracting Party of Origin, their protection under this subparagraph shall not be required in the other Contracting Parties. For greater certainty, a refusal or invalidation of a trademark, or a finding of infringement, in the Contracting Parties under the terms of Article 11 cannot be based on the component that has a generic character.

Article 12
Protection Against Becoming Generic

Subject to the provisions of this Act, registered appellations of origin and registered geographical indications cannot be considered to have become generic² in a Contracting Party.

Article 13
Safeguards in Respect of Other Rights

(1) *[Prior Trademark Rights]* The provisions of this Act shall not prejudice a prior trademark applied for or registered in good faith, or acquired through use in good faith, in a Contracting Party. Where the law of a Contracting Party provides a limited exception to the rights conferred by a trademark to the effect that such a prior trademark in certain circumstances may not entitle its owner to prevent a registered appellation of origin or geographical indication from being granted protection or used in that Contracting Party, protection of the registered appellation of origin or geographical indication shall not limit the rights conferred by that trademark in any other way.

(2) *[Personal Name Used in Business]* The provisions of this Act shall not prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

(3) *[Rights Based on a Plant Variety or Animal Breed Denomination]* The provisions of this Act shall not prejudice the right of any person to use a plant variety or animal breed denomination in the course of trade, except where such plant variety or animal breed denomination is used in such a manner as to mislead the public.

(4) *[Safeguards in the Case of Notification of Withdrawal of Refusal or a Grant of Protection]* Where a Contracting Party that has refused the effects of an international registration under Article 15 on the ground of use under a prior trademark or other right, as referred to in this Article, notifies the withdrawal of that refusal under Article 16 or a grant of protection under Article 18, the resulting protection of the appellation of origin or geographical indication shall not prejudice that right or its use, unless the protection was granted following the cancellation, non-renewal, revocation or invalidation of the right.

² Agreed Statement concerning Article 12: For the purposes of this Act, it is understood that Article 12 is without prejudice to the application of the provisions of this Act concerning prior use, as, prior to international registration, the denomination or indication constituting the appellation of origin or geographical indication may already, in whole or in part, be generic in a Contracting Party other than the Contracting Party of Origin, for example, because the denomination or indication, or part of it, is identical with a term customary in common language as the common name of a good or service in such Contracting Party, or is identical with the customary name of a grape variety in such Contracting Party.

Article 14
Enforcement Procedures and Remedies

Each Contracting Party shall make available effective legal remedies for the protection of registered appellations of origin and registered geographical indications and provide that legal proceedings for ensuring their protection may be brought by a public authority or by any interested party, whether a natural person or a legal entity and whether public or private, depending on its legal system and practice.

Chapter IV
Refusal and Other Actions in Respect of International Registration

Article 15
Refusal

(1) *[Refusal of Effects of International Registration]* (a) Within the time limit specified in the Regulations, the Competent Authority of a Contracting Party may notify the International Bureau of the refusal of the effects of an international registration in its territory. The notification of refusal may be made by the Competent Authority *ex officio*, if its legislation so permits, or at the request of an interested party.

(b) The notification of refusal shall set out the grounds on which the refusal is based.

(2) *[Protection Under Other Instruments]* The notification of a refusal shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party to which the refusal relates.

(3) *[Obligation to Provide Opportunity for Interested Parties]* Each Contracting Party shall provide a reasonable opportunity, for anyone whose interests would be affected by an international registration, to request the Competent Authority to notify a refusal in respect of the international registration.

(4) *[Registration, Publication and Communication of Refusals]* The International Bureau shall record the refusal and the grounds for the refusal in the International Register. It shall publish the refusal and the grounds for the refusal and shall communicate the notification of refusal to the Competent Authority of the Contracting Party of Origin or, where the application has been filed directly in accordance with Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

(5) *[National Treatment]* Each Contracting Party shall make available to interested parties affected by a refusal, the same judicial and administrative remedies that are available to its own nationals in respect of the refusal of protection for an appellation of origin or a geographical indication.

Article 16
Withdrawal of Refusal

A refusal may be withdrawn in accordance with the procedures specified in the Regulations. A withdrawal shall be recorded in the International Register.

Article 17
Transitional Period

(1) *[Option to Grant Transitional Period]* Without prejudice to Article 13, where a Contracting Party has not refused the effects of an international registration on the ground of prior use by a third party or has withdrawn such refusal or has notified a grant of protection, it may, if its legislation so permits, grant a defined period as specified in the Regulations, for terminating such use.

(2) *[Notification of a Transitional Period]* The Contracting Party shall notify the International Bureau of any such period, in accordance with the procedures specified in the Regulations.

Article 18
Notification of Grant of Protection

The Competent Authority of a Contracting Party may notify the International Bureau of the grant of protection to a registered appellation of origin or geographical indication. The International Bureau shall record any such notification in the International Register and publish it.

Article 19
Invalidation

(1) *[Opportunity to Defend Rights]* Invalidation of the effects, in part or in whole, of an international registration in the territory of a Contracting Party may be pronounced only after having given the beneficiaries an opportunity to defend their rights. Such opportunity shall also be given to the natural person or legal entity referred to in Article 5(2)(ii).

(2) *[Notification, Recordal and Publication]* The Contracting Party shall notify the invalidation of the effects of an international registration to the International Bureau, which shall record the invalidation in the International Register and publish it.

(3) *[Protection Under Other Instruments]* Invalidation shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party that invalidated the effects of the international registration.

*Article 20**Modifications and Other Entries in the International Register*

Procedures for the modification of international registrations and other entries in the International Register shall be specified in the Regulations.

Chapter V

Administrative Provisions

*Article 21**Membership of the Lisbon Union*

The Contracting Parties shall be members of the same Special Union as the States party to the Lisbon Agreement or the 1967 Act, whether or not they are party to the Lisbon Agreement or the 1967 Act.

*Article 22**Assembly of the Special Union*

(1) *[Composition]* (a) The Contracting Parties shall be members of the same Assembly as the States party to the 1967 Act.

(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(c) Each delegation shall bear its own expenses.

(2) *[Tasks]* (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Act;

(ii) give directions to the Director General concerning the preparation of revision conferences referred to in Article 26(1), due account being taken of any comments made by those members of the Special Union which have not ratified or acceded to this Act;

(iii) amend the Regulations;

(iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him or her all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the biennial budget of the Special Union, and approve its final accounts;

(vi) adopt the financial Regulations of the Special Union;

(vii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Special Union;

(viii) determine which States, intergovernmental and non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 22 to 24 and 27;

(x) take any other appropriate action to further the objectives of the Special Union and perform any other functions as are appropriate under this Act.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) [*Quorum*] (a) One-half of the members of the Assembly which have the right to vote on a given matter shall constitute a quorum for the purposes of the vote on that matter.

(b) Notwithstanding the provisions of subparagraph (a), if, in any session, the number of the members of the Assembly which are States, have the right to vote on a given matter and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States and have the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States, have the right to vote on the said matter and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(4) [*Taking Decisions in the Assembly*] (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

(ii) any Contracting Party that is an intergovernmental organization may vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Act. No such intergovernmental organization shall participate in the vote if any one of its member States exercises its right to vote, and *vice versa*.

TEXT OF THE TREATY AS ADOPTED BY THE DIPLOMATIC CONFERENCE

(c) On matters concerning only States that are bound by the 1967 Act, Contracting Parties that are not bound by the 1967 Act shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.

(5) *[Majorities]* (a) Subject to Articles 25(2) and 27(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(6) *[Sessions]* (a) The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the members of the Assembly or on the Director General's own initiative.

(c) The agenda of each session shall be prepared by the Director General.

(7) *[Rules of Procedure]* The Assembly shall adopt its own rules of procedure.

Article 23
International Bureau

(1) *[Administrative Tasks]* (a) International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the Secretariat of the Assembly and of such committees and working groups as may have been established by the Assembly.

(c) The Director General shall be the Chief Executive of the Special Union and shall represent the Special Union.

(2) *[Role of the International Bureau in the Assembly and Other Meetings]* The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly. The Director General, or a staff member designated by him, shall be *ex officio* Secretary of such a body.

(3) *[Conferences]* (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with intergovernmental and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(4) *[Other Tasks]* The International Bureau shall carry out any other tasks assigned to it in relation to this Act.

Article 24
Finances

(1) *[Budget]* The income and expenses of the Special Union shall be reflected in the budget of the Organization in a fair and transparent manner.

(2) *[Sources of Financing of the Budget]* The income of the Special Union shall be derived from the following sources:

(i) fees collected under Article 7(1) and (2);

(ii) proceeds from the sale of, or royalties on, the publications of the International Bureau;

(iii) gifts, bequests, and subventions;

(iv) rent, investment revenue, and other, including miscellaneous, income;

(v) special contributions of the Contracting Parties or any alternative source derived from the Contracting Parties or beneficiaries, or both, if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses, as decided by the Assembly.

(3) *[Fixing of Fees; Level of the Budget]* (a) The amounts of the fees referred to in paragraph (2) shall be fixed by the Assembly on the proposal of the Director General and shall be so fixed that, together with the income derived from other sources under paragraph (2), the revenue of the Special Union should, under normal circumstances, be sufficient to cover the expenses of the International Bureau for maintaining the international registration service.

(b) If the Program and Budget of the Organization is not adopted before the beginning of a new financial period, the authorization to the Director General to incur obligations and make payments shall be at the same level as it was in the previous financial period.

(4) *[Establishing the Special Contributions Referred to in Paragraph (2)(v)]* For the purpose of establishing its contribution, each Contracting Party shall belong to the same class as it belongs to in the context of the Paris Convention or, if it is not a Contracting Party of the Paris Convention, as it would belong to if it were a Contracting Party of the Paris Convention. Intergovernmental organizations shall be considered to belong to contribution class I (one), unless otherwise unanimously decided by the Assembly. The contribution shall be partially weighted according to the number of registrations originating in the Contracting Party, as decided by the Assembly.

(5) *[Working Capital Fund]* The Special Union shall have a working capital fund, which shall be constituted by payments made by way of advance by each member of the Special Union when the Special Union so decides. If the fund becomes insufficient, the Assembly may decide to increase it. The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General. Should the Special Union record a surplus of income over expenditure in any financial period, the Working Capital Fund advances may be repaid to each member proportionate to their initial payments upon proposal by the Director General and decision by the Assembly.

(6) *[Advances by Host State]* (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(7) *[Auditing of Accounts]* The auditing of the accounts shall be effected by one or more of the States members of the Special Union or by external auditors, as provided in the Financial Regulations of the Organization. They shall be designated, with their agreement, by the Assembly.

Article 25 *Regulations*

(1) *[Subject-Matter]* The details for carrying out this Act shall be established in the Regulations.

(2) *[Amendment of Certain Provisions of the Regulations]* (a) The Assembly may decide that certain provisions of the Regulations may be amended only by unanimity or only by a three-fourths majority.

(b) In order for the requirement of unanimity or a three-fourths majority no longer to apply in the future to the amendment of a provision of the Regulations, unanimity shall be required.

(c) In order for the requirement of unanimity or a three-fourths majority to apply in the future to the amendment of a provision of the Regulations, a three-fourths majority shall be required.

(3) *[Conflict Between This Act and the Regulations]* In the case of conflict between the provisions of this Act and those of the Regulations, the former shall prevail.

Chapter VI

Revision and Amendment

Article 26

Revision

- (1) *[Revision Conferences]* This Act may be revised by Diplomatic Conferences of the Contracting Parties. The convocation of any Diplomatic Conference shall be decided by the Assembly.
- (2) *[Revision or Amendment of Certain Articles]* Articles 22 to 24 and 27 may be amended either by a revision conference or by the Assembly according to the provisions of Article 27.

Article 27

Amendment of Certain Articles by the Assembly

- (1) *[Proposals for Amendment]* (a) Proposals for the amendment of Articles 22 to 24, and the present Article, may be initiated by any Contracting Party or by the Director General.
- (b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.
- (2) *[Majorities]* Adoption of any amendment to the Articles referred to in paragraph (1) shall require a three-fourths majority, except that adoption of any amendment to Article 22, and to the present paragraph, shall require a four-fifths majority.
- (3) *[Entry into Force]* (a) Except where subparagraph (b) applies, any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of those Contracting Parties which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on that amendment.
- (b) Any amendment to Article 22(3) or (4) or to this subparagraph shall not enter into force if, within six months of its adoption by the Assembly, any Contracting Party notifies the Director General that it does not accept such amendment.
- (c) Any amendment which enters into force in accordance with the provisions of this paragraph shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

Chapter VII Final Provisions

Article 28 Becoming Party to This Act

(1) *[Eligibility]* Subject to Article 29 and paragraphs (2) and (3) of the present Article,

(i) any State which is party to the Paris Convention may sign and become party to this Act;

(ii) any other State member of the Organization may sign and become party to this Act if it declares that its legislation complies with the provisions of the Paris Convention concerning appellations of origin, geographical indications and trademarks;

(iii) any intergovernmental organization may sign and become party to this Act, provided that at least one member State of that intergovernmental organization is party to the Paris Convention and provided that the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Act and that, under the constituting treaty of the intergovernmental organization, legislation applies under which regional titles of protection can be obtained in respect of geographical indications.

(2) *[Ratification or Accession]* Any State or intergovernmental organization referred to in paragraph (1) may deposit

(i) an instrument of ratification, if it has signed this Act; or

(ii) an instrument of accession, if it has not signed this Act.

(3) *[Effective Date of Deposit]* (a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.

(b) The effective date of the deposit of the instrument of ratification or accession of any State that is a member State of an intergovernmental organization and in respect of which the protection of appellations of origin or geographical indications can only be obtained on the basis of legislation applying between the member States of the intergovernmental organization shall be the date on which the instrument of ratification or accession of that intergovernmental organization is deposited, if that date is later than the date on which the instrument of the said State has been deposited. However, this subparagraph does not apply with regard to States that are party to the Lisbon Agreement or the 1967 Act and shall be without prejudice to the application of Article 31 with regard to such States.

Article 29
Effective Date of Ratifications and Accessions

- (1) *[Instruments to Be Taken into Consideration]* For the purposes of this Article, only instruments of ratification or accession that are deposited by States or intergovernmental organizations referred to in Article 28(1) and that have an effective date according to Article 28(3) shall be taken into consideration.
- (2) *[Entry into Force of This Act]* This Act shall enter into force three months after five eligible parties referred to in Article 28 have deposited their instruments of ratification or accession.
- (3) *[Entry into Force of Ratifications and Accessions]* (a) Any State or intergovernmental organization that has deposited its instrument of ratification or accession three months or more before the date of entry into force of this Act shall become bound by this Act on the date of the entry into force of this Act.
- (b) Any other State or intergovernmental organization shall become bound by this Act three months after the date on which it has deposited its instrument of ratification or accession or at any later date indicated in that instrument.
- (4) *[International Registrations Effected Prior to Accession]* In the territory of the acceding State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies, the provisions of this Act shall apply in respect of appellations of origin and geographical indications already registered under this Act at the time the accession becomes effective, subject to Article 7(4) as well as the provisions of Chapter IV, which shall apply *mutatis mutandis*. The acceding State or intergovernmental organization may also specify, in a declaration attached to its instrument of ratification or accession, an extension of the time limit referred to in Article 15(1), and the periods referred to in Article 17, in accordance with the procedures specified in the Regulations in that respect.

Article 30
Prohibition of Reservations

No reservations to this Act are permitted.

Article 31
Application of the Lisbon Agreement and the 1967 Act

- (1) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act]* This Act alone shall be applicable as regards the mutual relations of States party to both this Act and the Lisbon Agreement or the 1967 Act. However, with regard to international registrations of appellations of origin effective under the Lisbon Agreement or the 1967 Act, the States shall accord no lower protection than is required by the Lisbon Agreement or the 1967 Act.

(2) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act and States Party to the Lisbon Agreement or the 1967 Act Without Being Party to This Act]* Any State party to both this Act and the Lisbon Agreement or the 1967 Act shall continue to apply the Lisbon Agreement or the 1967 Act, as the case may be, in its relations with States party to the Lisbon Agreement or the 1967 Act that are not party to this Act.

Article 32
Denunciation

(1) *[Notification]* Any Contracting Party may denounce this Act by notification addressed to the Director General.

(2) *[Effective Date]* Denunciation shall take effect one year after the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Act to any application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

Article 33
Languages of this Act; Signature

(1) *[Original Texts; Official Texts]* (a) This Act shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(a) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) *[Time Limit for Signature]* This Act shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 34
Depositary

The Director General shall be the depositary of this Act.

**REGULATIONS UNDER THE GENEVA ACT OF THE LISBON AGREEMENT ON
APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS**

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CHAPTER I
INTRODUCTORY AND GENERAL PROVISIONS

Rule 1
Abbreviated Expressions

For the purposes of these Regulations, unless expressly stated otherwise:

- (i) abbreviated expressions defined in Article 1 shall have the same meaning in these Regulations;
- (ii) “Rule” refers to a rule of these Regulations;
- (iii) “Administrative Instructions” means the Administrative Instructions referred to in Rule 24;
- (iv) “Official Form” means a form drawn up by the International Bureau.

Rule 2
Calculation of Time Limits

- (1) *[Periods Expressed in Years]* A period expressed in years shall expire in the subsequent year on the same day and month as the day and month of the event from which the period starts to run, except that, where the event occurred on February 29, the period shall expire on February 28 of the subsequent year.
- (2) *[Periods Expressed in Months]* A period expressed in months shall expire in the relevant subsequent month on the same day as the day of the event from which the period starts to run, except that, where the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month.
- (3) *[Expiry on a Day Which Is Not a Working Day for the International Bureau or a Competent Authority]* If the period of a time limit applying to the International Bureau or a Competent Authority expires on a day which is not a working day for the International Bureau or a Competent Authority, the period shall, notwithstanding paragraphs (1) and (2), expire for the International Bureau or the Competent Authority, as the case may be, on the first subsequent working day.

Rule 3
Working Languages

- (1) *[Application]* The application shall be in English, French or Spanish.
- (2) *[Communications Subsequent to the International Application]* Any communication concerning an application or an international registration shall be in English, French or Spanish, at the choice of the Competent Authority concerned or, in the case of Article 5(3), at the choice of the beneficiaries or the natural person or legal entity referred to in

Article 5(2)(ii). Any translation needed for the purposes of these procedures shall be made by the International Bureau.

(3) *[Entries in the International Register and Publication]* Entries in the International Register and publication of such entries by the International Bureau shall be in English, French and Spanish. The translations needed for those purposes shall be made by the International Bureau. However, the International Bureau shall not translate the appellation of origin or the geographical indication.

(4) *[Transliteration of the Appellation of Origin or Geographical Indication]* Where the application contains a transliteration of the appellation of origin or the geographical indication in accordance with Rule 5(2)(b), the International Bureau shall not check whether the transliteration is correct.

Rule 4 *Competent Authority*

(1) *[Notification to the International Bureau]* Upon accession, each Contracting Party shall notify the International Bureau of the name and contact details of its Competent Authority, i.e. the authority it has designated to present applications and other notifications to, and receive notifications from, the International Bureau. In addition, such Competent Authority shall make available information on the applicable procedures in the Contracting Party for the enforcement of rights in appellations of origin and geographical indications.

(2) *[One Authority or Different Authorities]* The notification referred to in paragraph (1) shall, preferably, indicate a single Competent Authority. When a Contracting Party notifies different Competent Authorities, this notification shall clearly indicate their respective competence in respect of the presentation of applications to, and the receipt of notifications from, the International Bureau.

(3) *[Modifications]* Contracting Parties shall notify the International Bureau of any change in the particulars referred to in paragraph (1). However, the International Bureau may *ex officio* take cognizance of a change in the absence of a notification where it has clear indications that such a change has taken place.

Chapter II **Application and International Registration**

Rule 5 *Requirements Concerning the Application*

(1) *[Filing]* The application shall be filed with the International Bureau on the Official Form provided to that end and shall be signed by the Competent Authority presenting it or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii).

(2) *[Application – Mandatory Contents]* (a) The application shall indicate:

(i) the Contracting Party of Origin;

(ii) the Competent Authority presenting the application or, in the case of Article 5(3), details identifying the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii);

(iii) the beneficiaries, designated collectively or, where collective designation is not possible, by name, or the natural person or legal entity having legal standing under the law of the Contracting Party of Origin to assert the rights of the beneficiaries or other rights in the appellation of origin or the geographical indication;

(iv) the appellation of origin or the geographical indication for which registration is sought, in the official language of the Contracting Party of Origin or, where the Contracting Party of Origin has more than one official language, in the official language or languages in which the appellation of origin or the geographical indication is contained in the registration, act or decision, by virtue of which protection is granted in the Contracting Party of Origin³;

(v) the good or goods to which the appellation of origin, or the geographical indication, applies, as precisely as possible;

(vi) the geographical area of origin or the geographical area of production of the good or goods;

(vii) the identifying details, including the date of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin.

(b) If they are not in Latin characters, the application shall include a transliteration of the names of the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), of the geographical area of origin, and of the appellation of origin or the geographical indication for which registration is sought. The transliteration shall use the phonetics of the language of the application¹.

(c) The application shall be accompanied by the registration fee and any other fees, as specified in Rule 8.

(3) *[Application – Particulars Concerning the Quality, Reputation or Characteristic(s)]* (a) To the extent that a Contracting Party requires that, for the protection of a registered appellation of origin or geographical indication in its territory, the application further indicate particulars concerning, in the case of an appellation of origin, the quality or characteristics of the good and its connection with the geographical environment of the geographical area of production, and, in the case of a geographical indication, the quality, reputation or other characteristic of the good and its connection with the geographical area of origin, it shall notify that requirement to the Director General.

¹ The application of Rule 5(2)(a)(iv) and Rule 5(2)(b) is subject to the provisions of Rule 3(3) and (4).

(b) In order to meet such a requirement, particulars as referred to in subparagraph (a) shall be provided in a working language, but they shall not be translated by the International Bureau.

(c) An application that is not in accordance with a requirement as notified by a Contracting Party under subparagraph (a) shall, subject to Rule 6, have the effect that protection is renounced in respect of that Contracting Party.

(4) *[Application – Signature and/or Intention to Use]* (a) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication the application be signed by a person having legal standing to assert the rights conferred by such protection, it shall notify that requirement to the Director General.

(b) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication the application be accompanied by a declaration of intention to use the registered appellation of origin or geographical indication in its territory or a declaration of intention to exercise control over the use by others of the registered appellation of origin or geographical indication in its territory, it shall notify that requirement to the Director General.

(c) An application that is not signed in accordance with subparagraph (a), or that is not accompanied by a declaration indicated in subparagraph (b), shall, subject to Rule 6, have the effect that protection is renounced in respect of the Contracting Party requiring such signature or declaration, as notified under subparagraphs (a) and (b).

(5) *[Application – Protection Not Claimed for Certain Elements of the Appellation of Origin or the Geographical Indication]* The application shall indicate whether or not, to the best knowledge of the applicant, the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin, specifies that protection is not granted for certain elements of the appellation of origin or the geographical indication. Any such elements shall be indicated in the application in a working language.

(6) *[Application – Optional Contents]* The application may indicate or contain:

(i) the addresses of the beneficiaries;

(ii) a declaration that protection is renounced in one or more Contracting Parties;

(iii) a copy in the original language of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin or the geographical indication in the Contracting Party of Origin;

(iv) a statement to the effect that protection is not claimed for certain elements, other than those referred to in paragraph (5) of the appellation of origin or the geographical indication.

Rule 6
Irregular Applications

(1) *[Examination of the Application and Correction of Irregularities]* (a) Subject to paragraph (2), if the International Bureau finds that an application does not satisfy the conditions set out in Rule 3(1) or Rule 5, it shall defer registration and invite the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), to remedy the irregularity found within a period of three months from the date on which the invitation was sent.

(b) If the irregularity found is not corrected within two months of the date of the invitation referred to in subparagraph (a), the International Bureau shall send a reminder of its invitation. The sending of such a reminder shall have no effect on the three-month period referred to in subparagraph (a).

(c) If the correction of the irregularity is not received by the International Bureau within the three-month period referred to in subparagraph (a), the application shall, subject to subparagraph (d), be rejected by the International Bureau, which shall inform the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority, accordingly.

(d) In the case of an irregularity with respect to a requirement based on a notification made under Rule 5(3) or (4), or on a declaration made under Article 7(4), if the correction of the irregularity is not received by the International Bureau within the three-month period referred to in subparagraph (a), the protection resulting from the international registration shall be considered to be renounced in the Contracting Party having made the notification or the declaration.

(e) Where, in accordance with subparagraph (c), the application is rejected, the International Bureau shall refund the fees paid in respect of the application, after deduction of an amount corresponding to half the registration fee referred to in Rule 8.

(2) *[Application Not Considered as Such]* If the application is not filed by the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), it shall not be considered as such by the International Bureau and shall be returned to the sender.

Rule 7
Entry in the International Register

(1) *[Registration]* (a) Where the International Bureau finds that the application satisfies the conditions set out in Rules 3(1) and 5, it shall enter the appellation of origin or the geographical indication in the International Register.

(b) Where the application is also governed by the Lisbon Agreement or the 1967 Act, the International Bureau shall enter the appellation of origin in the International Register if it finds that the application satisfies the conditions set out in Rules 3(1) and 5 of the Regulations that apply in respect of the Lisbon Agreement or the 1967 Act.

(c) The International Bureau shall indicate per Contracting Party whether the international registration is governed by this Act or by the Lisbon Agreement or the 1967 Act.

(2) [*Contents of the Registration*] The international registration shall contain or indicate:

- (i) all the particulars given in the application;
- (ii) the language in which the International Bureau received the application;
- (iii) the number of the international registration;
- (iv) the date of the international registration.

(3) [*Certificate and Notification*] The International Bureau shall:

- (i) send a certificate of international registration to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), to the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) that requested the registration; and
- (ii) notify the international registration to the Competent Authority of each Contracting Party.

(4) [*Implementation of Article 31(1)*] (a) In case of the ratification of, or accession to, this Act by a State that is party to the Lisbon Agreement or the 1967 Act, Rule 5(2) to (4) shall apply *mutatis mutandis* with regard to international registrations or appellations of origin effective under the Lisbon Agreement or the 1967 Act in respect of that State. The International Bureau shall verify with the Competent Authority concerned any modifications to be made, in view of the requirements of Rules 3(1) and 5(2) to (4), for the purpose of their registration under this Act and notify international registrations thus effected to all other Contracting Parties. Modifications shall be subject to payment of the fee specified in Rule 8(1)(ii).

(b) Any declaration of refusal or notification of invalidation issued by a Contracting Party that is also party to the Lisbon Agreement or the 1967 Act shall remain effective under this Act, unless the Contracting Party notifies a withdrawal of refusal under Article 16 or a grant of protection under Article 18.

(c) Where subparagraph (b) does not apply, any Contracting Party that is also party to the Lisbon Agreement or the 1967 Act shall, upon receipt of a notification under subparagraph (a), continue to protect the appellation of origin concerned thenceforth also under this Act, unless the Contracting Party indicates otherwise. Any period granted under Article 5(6) of the Lisbon Agreement or the 1967 Act and still effective at the time the notification under subparagraph (a) is received shall, for its remainder, be subject to the provisions of Article 17.

Rule 8
Fees

(1) [*Amount of Fees*] The International Bureau shall collect the following fees², payable in Swiss francs:

- (i) fee for international registration ...
- (ii) fee for each modification of an international registration ...
- (iii) fee for providing an extract from the International Register ...
- (iv) fee for providing an attestation or any other written information concerning the contents of the International Register ...
- (v) individual fees as referred to in paragraph (2) ...

(2) [*Establishment of the Amount of Individual Fees*] (a) Where a Contracting Party makes a declaration as referred to in Article 7(4) that it wants to receive an individual fee, as referred to in that provision, the amount of such fee shall be indicated in the currency used by the Competent Authority.

(b) Where the fee is indicated in the declaration referred to in subparagraph (a) in a currency other than Swiss currency, the Director General shall, after consultation with the Competent Authority of the Contracting Party, establish the amount of the fee in Swiss currency on the basis of the official exchange rate of the United Nations.

(c) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual fee has been indicated by a Contracting Party is higher or lower by at least 5 per cent than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Competent Authority of that Contracting Party may ask the Director General to establish a new amount of the fee in Swiss currency according to the official exchange rate of the United Nations prevailing on the day preceding the day on which the request is made. The Director General shall proceed accordingly. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount on the website of the Organization.

(d) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual fee has been indicated by a Contracting Party is lower by at least 10 per cent than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Director General shall establish a new amount of the fee in Swiss currency according to the current official exchange rate of the United Nations. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount on the web site of the Organization.

² The amounts of the fees are to be decided by the Assembly.

(3) *[Crediting of Individual Fees to the Accounts of the Contracting Parties Concerned]*

Any individual fee paid to the International Bureau in respect of a Contracting Party shall be credited to the account of that Contracting Party with the International Bureau within the month following the month in the course of which the recording of the international registration for which that fee has been paid was effected.

(4) *[Obligation to Use Swiss Currency]* All payments made under these Regulations to the International Bureau shall be in Swiss currency irrespective of the fact that, where the fees are paid through the Competent Authority, such Competent Authority may have collected those fees in another currency.

(5) *[Payment]* (a) Subject to subparagraph (b), the fees shall be paid directly to the International Bureau.

(b) The fees payable in connection with an application may be paid through the Competent Authority if the Competent Authority accepts to collect and forward such fees and the beneficiaries so wish. Any Competent Authority which accepts to collect and forward such fees shall notify that fact to the Director General.

(6) *[Modes of Payment]* Fees shall be paid to the International Bureau in accordance with the Administrative Instructions.

(7) *[Indications Accompanying the Payment]* At the time of the payment of any fee to the International Bureau, an indication must be given of the appellation of origin or the geographical indication concerned and the purpose of the payment.

(8) *[Date of Payment]* (a) Subject to subparagraph (b), any fee shall be considered to have been paid to the International Bureau on the day on which the International Bureau receives the required amount.

(b) Where the required amount is available in an account opened with the International Bureau and that Bureau has received instructions from the holder of the account to debit it, the fee shall be considered to have been paid to the International Bureau on the day on which the International Bureau receives an application or a request for the recording of a modification.

(9) *[Change in the Amount of the Fees]* Where the amount of any fee is changed, the amount valid on the date on which the fee was received by the International Bureau shall be applicable.

Chapter III

Refusal and Other Actions in Respect of International Registration

Rule 9 *Refusal*

(1) *[Notification to the International Bureau]* (a) A refusal shall be notified to the International Bureau by the Competent Authority of the concerned Contracting Party and shall be signed by that Competent Authority.

(b) The refusal shall be notified within a period of one year from the receipt of the notification of international registration under Article 6(4). In the case of Article 29(4), this time limit may be extended by another year.

(2) *[Contents of the Notification of Refusal]* A notification of refusal shall indicate or contain:

(i) the Competent Authority notifying the refusal;

(ii) the number of the relevant international registration, preferably accompanied by further information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication;

(iii) the grounds on which the refusal is based;

(iv) where the refusal is based on the existence of a prior right, as referred to in Article 13, the essential particulars of that prior right and, in particular, if it is constituted by a national, regional or international trademark application or registration, the date and number of such application or registration, the priority date (where appropriate), the name and address of the holder, a reproduction of the trademark, together with the list of relevant goods and services given in the trademark application or registration, it being understood that the list may be submitted in the language of the said application or registration;

(v) where the refusal concerns only certain elements of the appellation of origin, or the geographical indication, an indication of the elements that it concerns;

(vi) the judicial or administrative remedies available to contest the refusal, together with the applicable time limits.

(3) *[Entry in the International Register and Notifications by the International Bureau]* Subject to Rule 10(1), the International Bureau shall enter in the International Register any refusal, together with the date on which the notification of refusal was sent to the International Bureau, and shall communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 10
Irregular Notification of Refusal

(1) *[Declaration of Refusal Not Considered as Such]* (a) A notification of refusal shall not be considered as such by the International Bureau:

(i) if it does not indicate the number of the international registration concerned, unless other information given in the declaration enables the registration to be identified without ambiguity;

(ii) if it does not indicate any ground for refusal;

(iii) if it is sent to the International Bureau after the expiry of the relevant time limit referred to in Rule 9(1);

(iv) if it is not notified to the International Bureau by the Competent Authority.

(b) Where subparagraph (a) applies, the International Bureau shall inform the Competent Authority that submitted the notification of refusal that the refusal is not considered as such by the International Bureau and has not been entered in the International Register, shall state the reasons therefore and shall, unless it is unable to identify the international registration concerned, communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

(2) *[Irregular Declaration]* If the notification of refusal contains an irregularity other than those referred to in paragraph (1), the International Bureau shall nevertheless enter the refusal in the International Register and shall communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting party of Origin. At the request of that Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), the International Bureau shall invite the Competent Authority that submitted the notification of refusal to regularize the notification without delay.

Rule 11
Withdrawal of Refusal

(1) *[Notification to the International Bureau]* A refusal may be withdrawn, in part or in whole, at any time by the Competent Authority that notified it. The withdrawal of a refusal shall be notified to the International Bureau by the relevant Competent Authority and shall be signed by such authority.

(2) *[Contents of the Notification]* The notification of withdrawal of a refusal shall indicate:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be

confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication;

(ii) the reason for the withdrawal and, in case of a partial withdrawal, the particulars referred to in Rule 9(2)(v);

(iii) the date on which the refusal was withdrawn.

(3) *[Entry in the International Register and Notifications by the International Bureau]* The International Bureau shall enter in the International Register any withdrawal referred to in paragraph (1) and shall communicate a copy of the notification of withdrawal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 12
Notification of Grant of Protection

(1) *[Optional Statement of Grant of Protection]* (a) A Competent Authority of a Contracting Party which does not refuse the effects of an international registration may, within the time limit referred to in Rule 9(1), send to the International Bureau a statement confirming that protection is granted to the appellation of origin, or the geographical indication, that is the subject of an international registration.

(b) The statement shall indicate:

(i) the Competent Authority of the Contracting Party making the statement;

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication; and

(iii) the date of the statement.

(2) *[Optional Statement of Grant of Protection Following a Refusal]* (a) Where a Competent Authority that has previously submitted a notification of refusal wishes to withdraw that refusal, it may, instead of notifying the withdrawal of refusal in accordance with Rule 11(1), send to the International Bureau a statement to the effect that protection is granted to the relevant appellation of origin or geographical indication.

(b) The statement shall indicate:

(i) the Competent Authority of the Contracting Party making the statement;

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(iii) the reason for the withdrawal and, in case of a grant of protection that amounts to a partial withdrawal of refusal, the particulars referred to in Rule 9(2)(v); and

(iv) the date on which protection was granted.

(3) *[Entry in the International Register and Notifications by the International Bureau]*

The International Bureau shall enter in the International Register any statement referred to in paragraphs (1) or (2) and communicate a copy of such statement to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 13

Notification of Invalidation of the Effects of an International Registration in a Contracting Party

(1) *[Notification of Invalidation to the International Bureau]* Where the effects of an international registration are invalidated in a Contracting Party, in whole or in part, and the invalidation is no longer subject to appeal, the Competent Authority of the concerned Contracting Party shall transmit to the International Bureau a notification of invalidation. The notification shall indicate or contain:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(ii) the authority that pronounced the invalidation;

(iii) the date on which the invalidation was pronounced;

(iv) where the invalidation is partial, the particulars referred to in Rule 9(2)(v);

(v) the grounds on the basis of which the invalidation was pronounced;

(vi) a copy of the decision that invalidated the effects of the international registration.

(2) *[Entry in the International Register and Notifications by the International Bureau]*

The International Bureau shall enter the invalidation in the International Register together with the particulars referred to in items (i) to (v) of paragraph (1) and shall communicate a copy of the notification to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

*Rule 14**Notification of Transitional Period Granted to Third Parties*

(1) *[Notification to the International Bureau]* Where a third party has been granted a defined period of time in which to terminate the use of a registered appellation of origin, or a registered geographical indication, in a Contracting Party, in accordance with Article 17(1), the Competent Authority of that Contracting Party shall notify the International Bureau accordingly. The notification shall indicate:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(ii) the identity of the third party concerned;

(iii) the period granted to the third party, preferably accompanied by information about the scope of the use during the transitional period;

(iv) the date from which the defined period begins, it being understood that the date may not be later than one year and three months from the receipt of the notification of international registration under Article 6(4) or, in the case of Article 29(4), no later than two years and three months from such receipt.

(2) *[Desirable Duration]* The duration of the period granted to a third party shall not be longer than 15 years, it being understood that the period may depend on the specific situation of each case and that a period longer than ten years would be exceptional.

(3) *[Entry in the International Register and Notifications by the International Bureau]* Subject to the notification referred to in paragraph (1) being sent by the Competent Authority to the International Bureau before the date referred to in paragraph (1)(iv), the International Bureau shall enter such notification in the International Register together with the particulars shown therein and shall communicate a copy of the notification to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

*Rule 15**Modifications*

(1) *[Permissible Modifications]* The following modifications may be recorded in the International Register:

(i) the addition or deletion of a beneficiary or some beneficiaries;

(ii) a modification of the names or addresses of the beneficiaries;

(iii) a modification of the limits of the geographical area of origin of the good or goods to which the appellation of origin, or the geographical indication, applies;

(iv) a modification relating to the legislative or administrative act, the judicial or administrative decision, or the registration referred to in Rule 5(2)(a)(vii);

(v) a modification relating to the Contracting Party of Origin that does not affect the geographical area of origin of the good or goods to which the appellation of origin, or the geographical indication, applies;

(vi) a modification under Rule 16.

(2) *[Procedure]* (a) A request for entry of a modification referred to in paragraph (1) shall be presented to the International Bureau by the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), and shall be accompanied by the fee specified in Rule 8.

(b) A request for entry of a modification referred to in paragraph (1) shall, where it concerns a newly established trans-border geographical area of origin, be presented to the International Bureau by the commonly designated Competent Authority.

(3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any modification requested in accordance with paragraphs (1) and (2) together with the date of receipt of the request by the International Bureau, confirm the entry to the Competent Authority that requested the modification, and communicate such modification to the Competent Authorities of the other Contracting Parties.

(4) *[Optional Alternative]* In the case of Article 5(3), paragraphs (1) to (3) shall apply *mutatis mutandis*, it being understood that a request from the beneficiaries or from the natural person or legal entity referred to in Article 5(2)(ii) must indicate that the change is requested because of a corresponding change to the registration, the legislative or administrative act, or the judicial or administrative decision, on the basis of which the appellation of origin, or the geographical indication, had been granted protection in the Contracting Party of Origin; and that the entry of the modification in the International Register shall be confirmed to the concerned beneficiaries or natural person or legal entity by the International Bureau, which shall also inform the Competent Authority of the Contracting Party of Origin.

Rule 16
Renunciation of Protection

(1) *[Notification to the International Bureau]* The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time notify the International Bureau that protection of the appellation of origin, or the geographical indication, is renounced, in whole or in part, in respect of one or some of the Contracting Parties. The notification of renunciation of protection shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication.

(2) *[Withdrawal of a Renunciation]* Any renunciation, including a renunciation under Rule 6(1)(d), may be withdrawn, in whole or in part, at any time by the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, subject to payment of the fee for a modification and, in the case of a renunciation under Rule 6(1)(d), the correction of the irregularity.

(3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any renunciation of protection referred to in paragraph (1), or any withdrawal of a renunciation referred to in paragraph (2), confirm the entry to the Competent Authority of the Contracting Party of Origin and, in the case of Article 5(3), the beneficiaries or the natural person or legal entity, while also informing the Competent Authority of the Contracting Party of Origin, and shall communicate the entry of such modification in the International Register to the Competent Authorities of each Contracting Party to which the renunciation, or the withdrawal of the renunciation, relates.

(4) *[Application of Rules 9 to 12]* The Competent Authority of a Contracting Party that receives a notification of the withdrawal of a renunciation may notify the International Bureau of the refusal of the effects of the international registration in its territory. The declaration shall be addressed to the International Bureau by such Competent Authority within a period of one year from the date of receipt of the notification by the International Bureau of the withdrawal of the renunciation. Rules 9 to 12 shall apply *mutatis mutandis*.

Rule 17
Cancellation of an International Registration

(1) *[Request for Cancellation]* The request for cancellation shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication.

(2) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any cancellation together with the particulars given in the request, confirm the entry to the Competent Authority of the

Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), while also informing the Competent Authority of the Contracting Party of Origin, and shall communicate the cancellation to the Competent Authorities of the other Contracting Parties.

Rule 18
Corrections Made to the International Register

- (1) *[Procedure]* If the International Bureau, acting *ex officio* or at the request of the Competent Authority of the Contracting Party of Origin, finds that the International Register contains an error with respect to an international registration, it shall correct the Register accordingly.
- (2) *[Optional Alternative]* In the case of Article 5(3), a request under paragraph (1) can also be submitted by the beneficiaries or by the natural person or legal entity referred to in Article 5(2)(ii). The beneficiaries or the natural person or legal entity shall be notified by the International Bureau of any correction concerning the international registration.
- (3) *[Notification of Corrections to the Competent Authorities]* The International Bureau shall notify any correction of the International Register to the Competent Authorities of all Contracting Parties as well as, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii).
- (4) *[Application of Rules 9 to 12]* Where the correction of an error concerns the appellation of origin or the geographical indication, or the good or goods to which the appellation of origin or the geographical indication applies, the Competent Authority of a Contracting Party has the right to declare that it cannot ensure the protection of the appellation of origin or geographical indication after the correction. The declaration shall be addressed to the International Bureau by such Competent Authority within a period of one year from the date of notification by the International Bureau of the correction. Rules 9 to 12 shall apply *mutatis mutandis*.

Chapter IV
Miscellaneous Provisions

Rule 19
Publication

The International Bureau shall publish all entries made in the International Register.

Rule 20
Extracts from the International Register and Other Information
Provided by the International Bureau

- (1) *[Information on the Contents of the International Register]* Extracts from the International Register or any other information on the contents of the Register shall be

provided by the International Bureau to any person so requesting, on payment of the fee specified in Rule 8.

(2) *[Communication of Provisions, Decisions or the Registration Under Which an Appellation of Origin or a Geographical Indication Is Protected]* (a) Any person may request from the International Bureau a copy in the original language of the provisions, the decisions or the registration referred to in Rule 5(2)(a)(vii), on payment of the fee specified in Rule 8.

(b) Where such documents have already been communicated to the International Bureau, the latter shall transmit without delay a copy to the person who has made the request.

(c) If such a document has never been communicated to the International Bureau, the latter shall request a copy of it from the Competent Authority of the Contracting Party of Origin and shall transmit the document, on receipt, to the person who has made the request.

Rule 21
Signature

Where the signature of a Competent Authority is required under these Regulations, such signature may be printed or replaced by the affixing of a facsimile or an official seal.

Rule 22
Date of Dispatch of Various Communications

Where the notifications referred to in Rules 9(1), 14(1), 16(4) and 18(4) are communicated through a postal service, the date of dispatch shall be determined by the postmark. If the postmark is illegible or missing, the International Bureau shall treat the communication concerned as if it had been sent 20 days before the date on which it was received. Where such notifications are sent through a mail delivery service, the date of dispatch shall be determined by the information provided by such delivery service on the basis of the details of the mailing as recorded by it. Such notifications may also be communicated by facsimile or by electronic means, as provided for in the Administrative Instructions.

Rule 23
Modes of Notification by the International Bureau

(1) *[Notification of the International Registration]* The notification of the international registration, referred to in Rule 7(3)(ii), or the notification of the withdrawal of a renunciation referred to in Rule 16(3), shall be addressed by the International Bureau to the Competent Authority of each Contracting Party concerned by any means enabling the International Bureau to establish the date on which the notification was received, as provided for in the Administrative Instructions.

(2) *[Other Notifications]* Any other notification by the International Bureau referred to in these Regulations shall be addressed to the Competent Authorities by any means enabling the International Bureau to establish that the notification has been received.

Rule 24
Administrative Instructions

(1) *[Establishment of Administrative Instructions; Matters Governed by Them]* (a) The Director General shall establish Administrative Instructions and may modify them. Before establishing or modifying the Administrative Instructions, the Director General shall consult the Competent Authorities of the Contracting Parties which have direct interest in the proposed Administrative Instructions or their proposed modification.

(b) The Administrative Instructions shall deal with matters in respect of which these Regulations expressly refer to such Instructions and with details in respect of the application of these Regulations.

(2) *[Supervision by the Assembly]* The Assembly may invite the Director General to modify any provision of the Administrative Instructions and the Director General shall act upon any such invitation.

(3) *[Publication and Effective Date]* (a) The Administrative Instructions and any modification thereof shall be published.

(b) Each publication shall specify the date on which the published provisions become effective.

(4) *[Conflict with the Act or These Regulations]* In the case of conflict between, on the one hand, any provision of the Administrative Instructions and, on the other hand, any provision of the Act or these Regulations, the latter shall prevail.

**TEXT OF THE BASIC PROPOSAL AS PRESENTED TO THE
DIPLOMATIC CONFERENCE****DRAFT NEW ACT OF THE LISBON AGREEMENT ON APPELLATIONS OF
ORIGIN AND GEOGRAPHICAL INDICATIONS**

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Chapter I Introductory and General Provisions

Article 1 Abbreviated Expressions

For the purposes of this Act, unless expressly stated otherwise:

(i) “Lisbon Agreement” means the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958;

(ii) “1967 Act” means the Lisbon Agreement as revised at Stockholm on July 14, 1967, and amended on September 28, 1979;

(iii) “this Act” means the Lisbon Agreement on Appellations of Origin and Geographical Indications, as established by the present Act;

(iv) “Regulations” means the Regulations as referred to in Article 25;

(v) “Paris Convention” means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised and amended;

(vi) “appellation of origin” means a denomination as referred to in Article 2(1)(i);

(vii) “geographical indication” means an indication as referred to in Article 2(1)(ii);

(viii) “International Register” means the International Register maintained by the International Bureau in accordance with Article 4 as the official collection of data concerning international registrations of appellations of origin and geographical indications, regardless of the medium in which such data are maintained;

(ix) “international registration” means an international registration recorded in the International Register;

(x) “application” means an application for international registration;

(xi) “registered” means entered in the International Register in accordance with this Act;

(xii) “geographical area of origin” means a geographical area as referred to in Article 2(2);

(xiii) “trans-border geographical area” means a geographical area situated in, or covering, adjacent Contracting Parties;

(xiv) “Contracting Party” means any State or intergovernmental organization party to this Act;

(xv) “Contracting Party of Origin” means the Contracting Party where the geographical area of origin is situated or the Contracting Parties where the trans-border geographical area of origin is situated;

(xvi) “Competent Authority” means an entity designated in accordance with Article 3;

(xvii) “beneficiaries” means the natural or legal persons entitled under the law of the Contracting Party of Origin to use an appellation of origin or a geographical indication;

(xviii) “intergovernmental organization” means an intergovernmental organization eligible to become party to this Act in accordance with Article 28(1)(iii);

(xix) “Organization” means the World Intellectual Property Organization;

(xx) “Director General” means the Director General of the Organization;

(xxi) “International Bureau” means the International Bureau of the Organization.

Article 2 *Subject-Matter*

(1) [*Appellations of Origin and Geographical Indications*] This Act applies in respect of:

(i) any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation; as well as

(ii) any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

(2) [*Possible Geographical Areas of Origin*] A geographical area of origin as described in paragraph (1) may consist of the entire territory of the Contracting Party of Origin or a region, locality or place in the Contracting Party of Origin. [This does not exclude the application of this Act in respect of a geographical area of origin, as described in paragraph (1), consisting of a trans-border geographical area, subject to Article 5(4).]

Article 3 *Competent Authority*

Each Contracting Party shall designate an entity which shall be responsible for the administration of this Act in its territory and for communications with the International Bureau under this Act and the Regulations. The Contracting Party shall notify the name and contact details of such Competent Authority to the International Bureau, as specified in the Regulations.

Article 4
International Register

The International Bureau shall maintain an International Register recording international registrations effected under this Act, under the Lisbon Agreement and the 1967 Act, or under both, and data relating to such international registrations.

Chapter II
Application and International Registration

Article 5
Application

- (1) *[Place of Filing]* Applications shall be filed with the International Bureau.
- (2) *[Application Filed by Competent Authority]* Subject to paragraph (3), the application for the international registration of an appellation of origin or a geographical indication shall be filed by the Competent Authority in the name of:
- (i) the beneficiaries; or
 - (ii) a legal entity which has legal standing to assert the rights of the beneficiaries or other rights in the appellation of origin or the geographical indication, such as, for instance, a federation or association representing the beneficiaries, or a group of producers representing them, whatever its composition and regardless of the legal form in which it presents itself.
- (3) *[Application Filed Directly by the Beneficiaries or a Legal Entity]* (a) If the legislation of the Contracting Party of Origin so permits, the application may be filed by the beneficiaries or by the legal entity referred to in paragraph (2)(ii).
- (b) Subparagraph (a) applies subject to a declaration from the Contracting Party that its legislation so permits. Such declaration may be made by the Contracting Party at the time of deposit of its instrument of ratification or accession or at any later time. Where the declaration is made at the time of the deposit of its instrument of ratification or accession, it shall take effect upon the entry into force of this Act with respect to that Contracting Party. Where the declaration is made after the entry into force of this Act with respect to the Contracting Party, it shall take effect three months after the date on which the Director General has received the declaration.
- [(4) *[Possible Joint Application in the Case of a Trans-border Geographical Area]* (a) In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may agree to act as a single Contracting Party of Origin by filing an application jointly, through a commonly designated Competent Authority.
- (b) Such an application may also be filed by the beneficiaries, or a legal entity as referred to in paragraph (2)(ii), on the understanding that the adjacent Contracting Parties have all made the declaration referred to in paragraph (3)(b).]

- (5) *[Mandatory Contents]* The Regulations shall specify the mandatory particulars that must be included in the application, in addition to those specified in Article 6(3).
- (6) *[Optional Contents]* The Regulations may specify the optional particulars that may be included in the application.

Article 6
International Registration

- (1) *[Formal Examination by the International Bureau]* Upon receipt of an application for the international registration of an appellation of origin or a geographical indication in due form, as specified in the Regulations, the International Bureau shall register the appellation of origin, or the geographical indication, in the International Register.
- (2) *[Date of International Registration]* Subject to paragraph (3), the date of the international registration shall be the date on which the application was received by the International Bureau.
- (3) *[Date of International Registration Where Particulars Missing]* Where the application does not contain all the following particulars:
- (i) the identification of the Competent Authority or, in the case of Article 5(3), the applicant or applicants,
 - (ii) the details identifying the beneficiaries and, where applicable, the legal entity referred to in Article 5(2)(ii),
 - (iii) the appellation of origin, or the geographical indication, for which international registration is sought,
 - (iv) the good or goods to which the appellation of origin, or the geographical indication, applies,

the date of the international registration shall be the date on which the last of the missing particulars is received by the International Bureau.

- (4) *[Publication and Notification of International Registrations]* The International Bureau shall, without delay, publish each international registration and notify the Competent Authority of each Contracting Party of the international registration.
- (5) *[Date of Effect of International Registration]* (a) Subject to subparagraph (b), a registered appellation of origin or geographical indication shall, in each Contracting Party that has not refused protection in accordance with Article 15, or that has sent to the International Bureau a notification of grant of protection in accordance with Article 18, be protected from the date of the international registration.

(b) A Contracting Party may, in a declaration, notify the Director General that, in accordance with its national or regional legislation, a registered appellation of origin or geographical indication is protected from a date that is mentioned in the declaration, which date

shall however not be later than the date of expiry of the time limit for refusal specified in the Regulations in accordance with Article 15(1)(a).

Article 7
Fees

- (1) *[International Registration Fee]* International registration of each appellation of origin, and each geographical indication, shall be subject to payment of the fee specified in the Regulations.
- (2) *[Fees for Other Entries in the International Register]* The Regulations shall specify the fees to be paid in respect of other entries in the International Register and for the supply of extracts, attestations, or other information concerning the contents of the international registration.

ALTERNATIVE A

- (3) *[Maintenance Fee]* The Assembly shall establish a fee to be paid for the maintenance of each international registration, at a level determined by the extent to which receipts from the sources indicated in Article 24(3)(i) and (iii) to (v) do not suffice to cover the expenses of the Special Union.

ALTERNATIVE B

- (3) *[Maintenance Fee]* The Assembly may establish a fee to be paid for the maintenance of each international registration, if and to the extent to which receipts from the sources indicated in Article 24(3)(i) and (iii) to (v) do not suffice to cover the expenses of the Special Union.

ALTERNATIVE C

No provision on maintenance fees.

- (4) *[Fee Reductions]* Reduced fees shall be established by the Assembly in respect of certain international registrations of appellations of origin, and in respect of certain international registrations of geographical indications, in particular those in respect of which the Contracting Party of Origin is a developing country or a least-developed country.

- (5) *[Individual Fee]*

ALTERNATIVE A

(a) Any Contracting Party may, in a declaration, notify the Director General that the protection resulting from international registration shall extend to it only if a fee is paid to cover its cost of substantive examination of the international registration. The amount of such individual fee shall be indicated in the declaration and can be changed in further declarations. The said amount may not be higher than the equivalent of the amount required under the national or regional legislation of the Contracting Party diminished by the savings resulting from the international procedure. Additionally, the Contracting Party may, in a declaration, notify the Director General that protection resulting from the international registration shall be subject to maintenance or renewal requirements and fee payments.

(b) Non-payment of an individual fee shall have the effect that protection is renounced in respect of the Contracting Party requiring the fee.

ALTERNATIVE B

(a) The Assembly may establish the possibility for Contracting Parties to adopt individual fees in order to cover the costs of substantive examination of international registrations.

(b) Non-payment of an individual fee shall have the effect that protection is renounced in respect of the Contracting Party requiring the fee.

Article 8

Period of Validity of International Registrations

(1) *[Dependency]* International registrations shall be valid indefinitely, on the understanding that the protection of a registered appellation of origin or geographical indication shall no longer be required if the denomination constituting the appellation of origin, or the indication constituting the geographical indication, is no longer protected in the Contracting Party of Origin.

(2) *[Cancellation]* (a) The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time request the International Bureau to cancel the international registration concerned.

(b) In case the denomination constituting a registered appellation of origin, or the indication constituting a registered geographical indication, is no longer protected in the Contracting Party of Origin, the Competent Authority of the Contracting Party of Origin shall request cancellation of the international registration.

[(3) *[Effect of Non-Payment of a Maintenance Fee]* Notwithstanding paragraph (1), an international registration shall be cancelled if the fee referred to in Article 7(3) is not paid.]

Chapter III Protection

Article 9

Commitment to Protect

Each Contracting Party shall protect registered appellations of origin and geographical indications on its territory, within its own legal system and practice but in accordance with the terms of this Act, subject to any refusal, renunciation, invalidation or cancellation that may become effective with respect to its territory, and on the understanding that Contracting Parties that do not distinguish in their national or regional legislation as between appellations of origin and geographical indications shall not be required to introduce such a distinction into their national or regional legislation.

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

- (1) *[Form of Legal Protection]* Each Contracting Party shall be free to choose the type of legislation under which it establishes the protection stipulated in this Act, provided that such legislation meets the substantive requirements of this Act.
- (2) *[Protection Under Other Instruments]* The provisions of this Act shall not in any way affect any other protection a Contracting Party may accord in respect of registered appellations of origin or registered geographical indications under its national or regional legislation, or under other international instruments.

*Article 11¹**Protection in Respect of Registered Appellations of Origin and Geographical Indications*

- (1) *[Content of Protection]* Subject to the provisions of this Act, each Contracting Party shall extend to a registered appellation of origin, or a registered geographical indication, protection against:
- (a) any use of the appellation of origin or the geographical indication
- (i) in respect of goods of the same kind as those to which the appellation of origin, or the geographical indication, applies not originating in the geographical area of origin or not complying with any other applicable requirements for using the appellation of origin, or the geographical indication; or
- ALTERNATIVE A
- (ii) which would amount to its misuse, imitation or evocation; or
- (iii) which would be detrimental to, or exploit unduly, its reputation,

ALTERNATIVE B

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

[¹ Draft Agreed Statement by the Diplomatic Conference: “As the International Bureau is only authorized to refuse applications that do not meet the formal requirements of the Lisbon Agreement or the 1967 Act, or the applicable Regulations under these instruments, applications concerning appellations of origin consisting of or containing a term occurring in an appellation of origin already registered under the Agreement have not been refused by the International Bureau, and will not be refused by the International Bureau under this Act either, as this would amount to a refusal on a substantive ground. It is for each Contracting Party to decide, on the basis of its own legal system and practice, whether such appellations of origin or geographical indications may coexist on its territory or that one of them shall prevail.”]

even if the appellation of origin or the geographical indication is used with minor differences; if the true origin of the goods is indicated; or if the appellation of origin, or the geographical indication, is used in translated form or accompanied by terms such as “style”, “kind”, “type”, “make”, “imitation”, “method”, “as produced in”, “like”, “similar”, or the like²;

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

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

(3) *[Declaration Concerning the Content of Protection]*

ALTERNATIVE A

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

ALTERNATIVE B

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

ALTERNATIVE C

Any State or intergovernmental organization may declare, when depositing its instrument of ratification or accession, that it shall, instead of the protection stipulated in paragraph (1)(a)(ii) and (iii), extend to the registered appellation of origin or the registered geographical indication protection against any use thereof in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies, if such use:

[² Where certain elements of the denomination or indication constituting the appellation of origin or geographical indication have a generic character in the Contracting Party of Origin, their protection under this subparagraph shall not be required in the other Contracting Parties. For greater certainty, a refusal or invalidation of a trademark, or a finding of infringement, in the Contracting Parties under the terms of Article 11 cannot be based on the component that has a generic character.]

(i) would indicate a connection between those goods and the beneficiaries of the appellation of origin or the geographical indication, and would be likely to damage their interests;

(ii) would be likely to impair or dilute in an unfair manner the distinctive character of the appellation of origin or the geographical indication; or

(iii) would take unfair advantage of the distinctive character of the appellation of origin or the geographical indication.

ALTERNATIVE D

Any State or intergovernmental organization may declare, when depositing its instrument of ratification or accession, that it shall, instead of the protection stipulated in paragraph (1)(a), extend to the registered appellation of origin or the registered geographical indication protection against any use thereof in respect of goods, if such use would indicate or suggest a connection between those goods and the beneficiaries, and is likely to damage the interests of the beneficiaries.

Article 12 Protection Against Becoming Generic

Subject to the provisions of this Act, registered appellations of origin and registered geographical indications cannot [be considered to have] become generic³ as long as [the denomination constituting] the appellation of origin, or [the indication constituting] the geographical indication, is protected in the Contracting Party of Origin [and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met].

Article 13 Safeguards in Respect of Other Rights

(1) *[Prior Trademark Rights]* Without prejudice to Articles 15 and 19, where a registered appellation of origin or a registered geographical indication conflicts with a prior trademark applied for or registered, or acquired through use, in good faith in a Contracting Party,

ALTERNATIVE A

the protection of that appellation of origin or geographical indication in that Contracting Party shall not prejudice the eligibility for, or the validity of, the registration of the trademark, or the right to use the trademark, taking into account the legitimate interests of the owner of the trademark as well as those of the beneficiaries of the rights in respect of the appellation of origin or the geographical indication and provided that the public is not misled.

³ Article 12 is without prejudice to the application of the provisions of this Act concerning prior use, as, prior to international registration, the denomination or indication constituting the appellation of origin or geographical indication may already, in whole or in part, be generic in a Contracting Party other than the Contracting Party of Origin, for example, because the denomination or indication, or part of it, is identical with a term customary in common language as the common name of a good or service in such Contracting Party, or is identical with the customary name of a grape variety in such Contracting Party.

ALTERNATIVE B

The protection of that appellation of origin or geographical indication in that Contracting Party shall be subject to the rights conferred by the prior trademark under national or regional law along with any applicable exceptions to those rights.

(2) *[Personal Name Used in Business]* The provisions of this Act shall not prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

(3) *[Rights Based on a Plant Variety or Animal Breed Denomination]* The provisions of this Act shall not prejudice the right of any person to use a plant variety or animal breed denomination in the course of trade, except where such plant variety or animal breed denomination is used in such a manner as to mislead the public.

*Article 14**Enforcement Procedures and Remedies*

Each Contracting Party shall make available effective legal remedies for the protection of registered appellations of origin and registered geographical indications and provide that legal proceedings for ensuring their protection may be brought by a public authority or by any interested party, whether a natural person or a legal entity and whether public or private, depending on its legal system and practice.

Chapter IV**Refusal and Other Actions in Respect of International Registrations***Article 15**Refusal*

(1) *[Refusal of Effects of International Registration]* (a) Within the time limit specified in the Regulations, the Competent Authority of a Contracting Party may notify the International Bureau of the refusal of the effects of an international registration in its territory. The notification of refusal may be filed by the Competent Authority *ex officio*, if its legislation so permits, or at the request of an interested party.

(b) The notification of refusal shall set out the grounds on which the refusal is based.

(2) *[Protection Under Other Instruments]* The notification of a refusal shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party to which the refusal relates.

(3) *[Obligation to Provide Opportunity for Interested Parties]* Each Contracting Party shall provide a reasonable opportunity, for anyone whose interests would be affected by an international registration, to request the Competent Authority to notify a refusal in respect of the international registration.

(4) *[Registration, Publication and Communication of Refusals]* The International Bureau shall record the refusal and the grounds for the refusal in the International Register. It shall publish the refusal and the grounds for the refusal and shall communicate the notification of refusal to the Competent Authority of the Contracting Party of Origin or, where the application has been filed directly in accordance with Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

(5) *[National Treatment]* Each Contracting Party shall make available to interested parties affected by a refusal the same judicial and administrative remedies that are available to its own nationals in respect of the refusal of protection for an appellation of origin or a geographical indication.

Article 16
Withdrawal of Refusal

(1) *[Procedures for the Withdrawal of Refusals]* A refusal may be withdrawn in accordance with the procedures specified in the Regulations. A withdrawal shall be recorded in the International Register.

[(2) *[Negotiations]* Where appropriate and without prejudice to Article 15(5), the Contracting Party of Origin may propose negotiations with a Contracting Party in respect of which a refusal has been recorded, in order to have the refusal withdrawn.]

Article 17
Prior Use

[(1) *[Phasing Out of Prior Use]* (a) Where a denomination constituting a registered appellation of origin, or an indication constituting a registered geographical indication, was, prior to the date of the international registration, in use in a Contracting Party by a third party and is not safeguarded under Article 13, that Contracting Party may, when it does not refuse the protection of the appellation of origin or geographical indication, grant to the third party a defined period, as specified in the Regulations, to terminate such use.

(b) Where a Contracting Party has refused the effects of an international registration under Article 15 on the ground of prior use as referred to in subparagraph (a), it may similarly grant to the third party a defined period to terminate such use in case it decides to withdraw the refusal under Article 16 or notify a grant of protection under Article 18.

(c) The Contracting Party shall notify the International Bureau of any such period, in accordance with the procedures specified in the Regulations.]

(2) *[Coexistence]* Where a Contracting Party that has refused the effects of an international registration under Article 15 on the ground of use under a prior trademark or other right, as referred to in Article 13, notifies the withdrawal of that refusal under Article 16 or a grant of protection under Article 18, the resulting protection of the appellation of origin or geographical indication

shall not prejudice that right or its use, unless the protection was granted following the cancellation, non-renewal, revocation or invalidation of the right⁴.

Article 18
Notification of Grant of Protection

The Competent Authority of a Contracting Party may notify the International Bureau of the grant of protection to a registered appellation of origin or geographical indication. The International Bureau shall record any such notification in the International Register and publish it.

Article 19
Invalidation

(1) *[Grounds for Invalidation]* The grounds on the basis of which a Contracting Party may pronounce invalidation, in part or in whole, of the effects of an international registration in its territory shall include:

ALTERNATIVE A

in particular, those based on a prior right, as referred to in Article 13.

ALTERNATIVE B

(i) a prior right, as referred to in Article 13, when the protection granted to the registered appellation of origin or geographical indication has been successfully challenged and the court decision is final; or

(ii) when compliance with the definition of an appellation of origin or geographical indication in the Contracting Party of Origin is not ensured anymore.

(2) *[Opportunity to Defend Rights]* An opportunity shall be given to the beneficiaries to defend their rights. Such opportunity shall also be given to the legal entity referred to in Article 5(2)(ii).

(3) *[Notification, Recordal and Publication]* The Contracting Party shall notify the invalidation of the effects of an international registration to the International Bureau, which shall record the invalidation in the International Register and publish it.

(4) *[Protection Under Other Instruments]* Invalidation shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party that invalidated the effects of the international registration.

⁴ In view of the safeguards under Article 13 in respect of use under prior trademarks and certain other rights, Article 17 does not provide for possible phasing out periods in respect of such use, unless the prior trademark or other right contains a denomination or indication that conflicts with a registered appellation of origin or geographical indication and is disclaimed under the prior trademark or other right, or manifestly does not form part of the subject-matter protected by the prior trademark or other right.

Article 20
Modifications and Other Entries in the International Register

Procedures for the modification of international registrations and other entries in the International Register shall be specified in the Regulations.

Chapter V
Administrative Provisions

Article 21
Membership of the Lisbon Union

The Contracting Parties shall be members of the same Special Union as the States party to the Lisbon Agreement or the 1967 Act, whether or not they are party to the Lisbon Agreement or the 1967 Act.

Article 22
Assembly of the Special Union

(1) *[Composition]* (a) The Contracting Parties shall be members of the same Assembly as the States party to the 1967 Act.

(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(c) Each delegation shall bear its own expenses.

(2) *[Tasks]*

(a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Act;

(ii) give directions to the Director General concerning the preparation of revision conferences referred to in Article 26(1), due account being taken of any comments made by those members of the Special Union which have not ratified or acceded to this Act;

(iii) amend the Regulations;

(iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him or her all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the biennial budget of the Special Union, and approve its final accounts;

(vi) adopt the financial Regulations of the Special Union;

(vii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Special Union;

(viii) determine which States, intergovernmental and non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 22 to 24 and 27;

(x) take any other appropriate action to further the objectives of the Special Union and perform any other functions as are appropriate under this Act.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) [*Quorum*] (a) One-half of the members of the Assembly which have the right to vote on a given matter shall constitute a quorum for the purposes of the vote on that matter.

(b) Notwithstanding the provisions of subparagraph (a), if, in any session, the number of the members of the Assembly which are States, have the right to vote on a given matter and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States and have the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States, have the right to vote on the said matter and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(4) [*Taking Decisions in the Assembly*] (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name, and

(ii) any Contracting Party that is an intergovernmental organization may vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Act, but no such intergovernmental organization shall participate in the vote if any one of its member States exercises its right to vote, and *vice versa*.

(c) On matters concerning only States that are bound by the 1967 Act, Contracting Parties that are not bound by the 1967 Act shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.

(5) *[Majorities]* (a) Subject to Articles 25(2) and 27(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(6) *[Sessions]* (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the members of the Assembly or on the Director General's own initiative.

(c) The agenda of each session shall be prepared by the Director General.

(7) *[Rules of Procedure]* The Assembly shall adopt its own rules of procedure.

Article 23 *International Bureau*

(1) *[Administrative Tasks]* (a) International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the Secretariat of the Assembly and of such committees and working groups as may have been established by the Assembly.

(c) The Director General shall be the Chief Executive of the Special Union and shall represent the Special Union.

(2) *[Role of the International Bureau in the Assembly and Other Meetings]* The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly. The Director General, or a staff member designated by him, shall be *ex officio* Secretary of such a body.

(3) *[Conferences]* (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with intergovernmental and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(4) *[Other Tasks]* The International Bureau shall carry out any other tasks assigned to it in relation to this Act.

Article 24
Finances

(1) *[Budget]* (a) The Special Union shall have a budget.

(b) The budget of the Special Union shall include the income and expenses specific to the Special Union and its contribution to the budget of expenses common to the Unions administered by the Organization.

(c) Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) *[Coordination With Budgets of Other Unions]* The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) *[Sources of Financing of the Budget]* The budget of the Special Union shall be financed from the following sources:

(i) fees collected under Article 7(1) and (2);

[(ii) maintenance fees, as referred to in Article 7(3);]

(iii) proceeds from the sale of, or royalties on, the publications of the International Bureau concerning the Special Union;

(iv) gifts, bequests, and subventions;

(v) rents, interest, and other miscellaneous income;

[(vi) contributions of the Contracting Parties, if and to the extent to which receipts from the sources indicated in items (i) to (v) do not suffice to cover the expenses of the Special Union].

(4) *[Fixing of Fees; Level of the Budget]* (a) The amounts of the fees referred to in paragraph (3) shall be fixed by the Assembly on the proposal of the Director General [and shall be so fixed that the revenue of the Special Union should, under normal circumstances, be sufficient to cover the expenses of the International Bureau for maintaining the international registration service without requiring payments of the contributions referred to in paragraph (3)(vi)].

(b) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the Financial Regulations of the Organization.

[(5) *[Establishing the Contributions Referred to in Paragraph (3)(vi)]* For the purpose of establishing its contribution referred to in paragraph (3)(vi), each Contracting Party shall belong to the same class as it belongs to in the context of the Paris Convention or, if it is not a Contracting Party of the Paris Convention, as it would belong to if it were a Contracting Party of the Paris Convention. Intergovernmental organizations shall, subject to a unanimous decision to the contrary by the Assembly, be considered to belong to contribution class I (one).]

(6) *[Working Capital Fund]* The Special Union shall have a working capital fund which shall be constituted by a single payment made by each Member of the Special Union. If the fund becomes insufficient, the Assembly shall decide to increase it. The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General.

(7) *[Advances by Host State]* (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(8) *[Auditing of Accounts]* The auditing of the accounts shall be effected by one or more of the States members of the Special Union or by external auditors, as provided in the Financial Regulations of the Organization. They shall be designated, with their agreement, by the Assembly.

Article 25 Regulations

(1) *[Subject-Matter]* The details for carrying out this Act shall be established in the Regulations.

(2) *[Amendment of Certain Provisions of the Regulations]* (a) The Regulations may specify that certain provisions of the Regulations may be amended only by unanimity or only by a three-fourths majority.

(b) In order for the requirement of unanimity or a three-fourths majority no longer to apply in the future to the amendment of a provision of the Regulations, unanimity shall be required.

(c) In order for the requirement of unanimity or a three-fourths majority to apply in the future to the amendment of a provision of the Regulations, a three-fourths majority shall be required.

(3) *[Conflict Between This Act and the Regulations]* In the case of conflict between the provisions of this Act and those of the Regulations, the former shall prevail.

Chapter VI

Revision and Amendment

Article 26 *Revision*

- (1) *[Revision Conferences]* This Act may be revised by Diplomatic Conferences of the Contracting Parties. The convocation of any Diplomatic Conference shall be decided by the Assembly.
- (2) *[Revision or Amendment of Certain Articles]* Articles 22 to 24 and 27 may be amended either by a revision conference or by the Assembly according to the provisions of Article 27.

Article 27 *Amendment of Certain Articles by the Assembly*

- (1) *[Proposals for Amendment]* (a) Proposals for the amendment of Articles 22 to 24, and the present Article, may be initiated by any Contracting Party or by the Director General.
- (b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.
- (2) *[Majorities]* Adoption of any amendment to the Articles referred to in paragraph (1) shall require a three-fourths majority, except that adoption of any amendment to Article 22, and to the present paragraph, shall require a four-fifths majority.
- (3) *[Entry into Force]* (a) Except where subparagraph (b) applies, any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of those Contracting Parties which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on that amendment.
- (b) Any amendment to Article 22(3) or (4) or to this subparagraph shall not enter into force if, within six months of its adoption by the Assembly, any Contracting Party notifies the Director General that it does not accept such amendment.
- (c) Any amendment which enters into force in accordance with the provisions of this paragraph shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

Chapter VII Final Provisions

Article 28 Becoming Party to This Act

- (1) *[Eligibility]* Subject to Article 29 and paragraphs (2) and (3) of the present Article,
- (i) any State which is party to the Paris Convention may sign and become party to this Act;
 - (ii) any other State may sign and become party to this Act if it declares that its legislation complies with the provisions of the Paris Convention concerning appellations of origin, geographical indications and trademarks;
 - (iii) any intergovernmental organization may sign and become party to this Act, provided that at least one member State of that intergovernmental organization is party to the Paris Convention and provided that the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Act and that, under the constituting treaty of the intergovernmental organization, legislation applies under which regional titles of protection can be obtained in respect of appellations of origin or geographical indications.
- (2) *[Ratification or Accession]* Any State or intergovernmental organization referred to in paragraph (1) may deposit
- (i) an instrument of ratification, if it has signed this Act, or
 - (ii) an instrument of accession, if it has not signed this Act.
- (3) *[Effective Date of Deposit]* (a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.
- (b) The effective date of the deposit of the instrument of ratification or accession of any State that is a member State of an intergovernmental organization and in respect of which the protection of appellations of origin or geographical indications can only be obtained on the basis of legislation applying between the member States of the intergovernmental organization shall be the date on which the instrument of ratification or accession of that intergovernmental organization is deposited, if that date is later than the date on which the instrument of the said State has been deposited. However, this subparagraph does not apply with regard to States that are party to the Lisbon Agreement or the 1967 Act and shall be without prejudice to the application of Article 31 with regard to such States.

Article 29
Effective Date of Ratifications and Accessions

- (1) *[Instruments to Be Taken into Consideration]* For the purposes of this Article, only instruments of ratification or accession that are deposited by States or intergovernmental organizations referred to in Article 28(1) and that have an effective date according to Article 28(3) shall be taken into consideration.
- (2) *[Entry into Force of This Act]* This Act shall enter into force three months after five eligible parties referred to in Article 28 have deposited their instruments of ratification or accession.
- (3) *[Entry into Force of Ratifications and Accessions]* (a) Any State or intergovernmental organization that has deposited its instrument of ratification or accession three months or more before the date of entry into force of this Act shall become bound by this Act on the date of the entry into force of this Act.
- (b) Any other State or intergovernmental organization shall become bound by this Act three months after the date on which it has deposited its instrument of ratification or accession or at any later date indicated in that instrument.
- (4) *[International Registrations Effected Prior to Accession]* In the territory of the acceding State or intergovernmental organization, the benefits of this Act shall apply in respect of appellations of origin already registered under this Act at the time the accession becomes effective, subject to [Article 7(5) as well as] the provisions of Chapter IV, which shall apply *mutatis mutandis*. However, the acceding State or intergovernmental organization may specify, in a declaration attached to its instrument of ratification or accession, an extension of the time limit referred to in Article 15(1), and the periods referred to in Article 17, in accordance with the procedures specified in the Regulations in that respect.

Article 30
Prohibition of Reservations

No reservations to this Act are permitted.

Article 31
Application of the Lisbon Agreement and the 1967 Act

- (1) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act]* This Act alone shall be applicable as regards the mutual relations of States party to both this Act and the Lisbon Agreement or the 1967 Act.
- (2) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act and States Party to the Lisbon Agreement or the 1967 Act Without Being Party to This Act]* Any State party to both this Act and the Lisbon Agreement or the 1967 Act shall continue to apply the Lisbon Agreement or the 1967 Act, as the case may be, in its relations with States party to the Lisbon Agreement or the 1967 Act that are not party to this Act.

Article 32
Denunciation

- (1) *[Notification]* Any Contracting Party may denounce this Act by notification addressed to the Director General.
- (2) *[Effective Date]* Denunciation shall take effect one year after the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Act to any application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

Article 33
Languages of this Act; Signature

- (1) *[Original Texts; Official Texts]* (a) This Act shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.
- (b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.
- (2) *[Time Limit for Signature]* This Act shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 34
Depositary

The Director General shall be the depositary of this Act.

**DRAFT REGULATIONS UNDER THE NEW ACT OF THE LISBON
AGREEMENT ON APPELLATIONS OF
ORIGIN AND GEOGRAPHICAL INDICATIONS**

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Chapter I Introductory and General Provisions

Rule 1 Abbreviated Expressions

For the purposes of these Regulations, unless expressly stated otherwise:

- (i) abbreviated expressions defined in Article 1 shall have the same meaning in these Regulations;
- (ii) “Rule” refers to a rule of these Regulations;
- (iii) “Administrative Instructions” means the Administrative Instructions referred to in Rule 24;
- (iv) “Official Form” means a form drawn up by the International Bureau.

Rule 2 Calculation of Time Limits

- (1) *[Periods Expressed in Years]* A period expressed in years shall expire in the subsequent year on the same day and month as the day and month of the event from which the period starts to run, except that, where the event occurred on February 29, the period shall expire on February 28 of the subsequent year.
- (2) *[Periods Expressed in Months]* A period expressed in months shall expire in the relevant subsequent month on the same day as the day of the event from which the period starts to run, except that, where the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month.
- (3) *[Expiry on a Day Which Is Not a Working Day for the International Bureau or a Competent Authority]* If the period of a time limit applying to the International Bureau or a Competent Authority expires on a day which is not a working day for the International Bureau or a Competent Authority, the period shall, notwithstanding paragraphs (1) and (2), expire for the International Bureau or the Competent Authority, as the case may be, on the first subsequent working day.

Rule 3 Working Languages

- (1) *[Application]* The application shall be in English, French or Spanish.
- (2) *[Communications Subsequent to the International Application]* Any communication concerning an application or an international registration shall be in English, French or Spanish, at the choice of the Competent Authority concerned or, in the case of Article 5(3), at the choice of the beneficiaries or the legal entity referred to in Article 5(2)(ii). Any translation needed for the purposes of these procedures shall be made by the International Bureau.

(3) *[Entries in the International Register and Publication]* Entries in the International Register and publication of such entries by the International Bureau shall be in English, French and Spanish. The translations needed for those purposes shall be made by the International Bureau. However, the International Bureau shall not translate the appellation of origin or the geographical indication.

(4) *[Transliteration of the Appellation of Origin or Geographical Indication]* Where the application contains a transliteration of the appellation of origin or the geographical indication in accordance with Rule 5(2)(b), the International Bureau shall not check whether the transliteration is correct.

Rule 4
Competent Authority

(1) *[Notification to the International Bureau]* Upon accession, each Contracting Party shall notify the International Bureau of the name and contact details of its Competent Authority, i.e. the authority it has designated to present applications and other notifications to, and receive notifications from, the International Bureau. In addition, such Competent Authority shall make available information on the applicable procedures in the Contracting Party for the enforcement of rights in appellations of origin and geographical indications.

(2) *[One Authority or Different Authorities]* The notification referred to in paragraph (1) shall, preferably, indicate a single Competent Authority. When a Contracting Party notifies different Competent Authorities, this notification shall clearly indicate their respective competence in respect of the presentation of applications to, and the receipt of notifications from, the International Bureau.

(3) *[Modifications]* Contracting Parties shall notify the International Bureau of any change in the particulars referred to in paragraph (1). However, the International Bureau may *ex officio* take cognizance of a change in the absence of a notification where it has clear indications that such a change has taken place.

Chapter II
Application and International Registration

Rule 5
Requirements Concerning the Application

(1) *[Filing]* The application shall be filed with the International Bureau on the Official Form provided to that end and shall be signed by the Competent Authority presenting it or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii).

(2) *[Application – Mandatory Contents]* (a) The application shall indicate:

(i) the Contracting Party of Origin;

(ii) the Competent Authority presenting the application or, in the case of Article 5(3) [or Article 5(4)(b)], details identifying the beneficiaries or the legal entity referred to in Article 5(2)(ii);

(iii) the beneficiaries, designated collectively or, where collective designation is not possible, by name;

(iv) the appellation of origin or the geographical indication for which registration is sought, in the official language of the Contracting Party of Origin or, where the Contracting Party of Origin has more than one official language, in the official language or languages in which the appellation of origin or the geographical indication is contained in the registration, act or decision, by virtue of which protection is granted in the Contracting Party of Origin⁶;

(v) the good or goods to which the appellation of origin, or the geographical indication, applies, as precisely as possible;

(vi) the geographical area of origin or the geographical area of production of the good or goods;

(vii) the identifying details, including the date of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin.

(b) If they are not in Latin characters, the application shall include a transliteration of the names of the beneficiaries or the legal entity referred to in Article 5(2)(ii), of the geographical area of origin, and of the appellation of origin or the geographical indication for which registration is sought. The transliteration shall use the phonetics of the language of the application¹.

(c) The application shall be accompanied by the registration fee and any other fees, as specified in Rule 8.

(3) *[Application – Particulars Concerning the Quality, Reputation or Characteristic(s)]*

ALTERNATIVE A

The application shall further indicate particulars concerning, in the case of an appellation of origin, the quality or characteristics of the good and its connection with the geographical environment of the geographical area of production, and, in the case of a geographical indication, the quality, reputation or other characteristic of the good and its connection with the geographical area of origin. This information shall be provided in a working language, but shall not be translated by the International Bureau.

ALTERNATIVE B

The application may further indicate particulars concerning, in the case of an appellation of origin, the quality or characteristics of the good and its connection with the geographical environment of the geographical area of production, and, in the case of a geographical indication, the quality, reputation or other characteristic of the good and its connection with the geographical

¹ The application of Rule 5(2)(a)(iv) and Rule 5(2)(b) is subject to the provisions of Rule 3(3) and (4).

area of origin. This information shall be provided in a working language, but shall not be translated by the International Bureau.

ALTERNATIVE C

(a) To the extent that a Contracting Party requires that, for the protection of a registered appellation of origin or geographical indication in its territory, the application further indicate particulars concerning, in the case of an appellation of origin, the quality or characteristics of the good and its connection with the geographical environment of the geographical area of production, and, in the case of a geographical indication, the quality, reputation or other characteristic of the good and its connection with the geographical area of origin, it shall notify that requirement to the Director General.

(b) In order to meet such a requirement, particulars as referred to in subparagraph (a) shall be provided in a working language, but they shall not be translated by the International Bureau.

(c) Non-compliance with the requirements under subparagraphs (a) and (b) shall have the effect of a renunciation of protection in respect of any Contracting Party having made the notification referred to in subparagraph (a).

(d) The Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) or the Competent Authority, may at any time withdraw such renunciation by presenting the required information, subject to Rule 16(2).

[(4) *[Application – Signature and/or Intention to Use]* (a) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication under its trademark law, the application be signed by the owner or the one entitled to use the appellation of origin or geographical indication and/or be accompanied by a declaration of intention to use the registered appellation of origin or geographical indication in its territory, it shall notify that requirement to the Director General.

(b) An application that is not signed by the owner or the one entitled to use the appellation of origin or geographical indication or that is not accompanied by a declaration of intention to use shall have the effect that protection is renounced in respect of the Contracting Party requiring such signature and/or such declaration, as notified under subparagraph (a).]

(5) *[Application – Protection Not Claimed for Certain Elements of the Appellation of Origin or the Geographical Indication]*

ALTERNATIVE A

The application shall indicate whether or not the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin, specifies that protection is not granted for certain elements of the appellation of origin or the geographical indication. Any such elements shall be indicated in the application in a working language.

ALTERNATIVE B

The application may contain a statement to the effect that protection is not claimed for certain elements of the appellation of origin or the geographical indication.

(6) [*Application – Optional Contents*] The application may indicate or contain:

(i) the addresses of the beneficiaries;

(ii) a declaration that protection is renounced in one or more Contracting Parties;

(iii) a copy in the original language of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin or the geographical indication in the Contracting Party of Origin.

Rule 6
Irregular Applications

(1) [*Examination of the Application and Correction of Irregularities*] (a) Subject to paragraph (2), if the International Bureau finds that an application does not satisfy the conditions set out in Rule 3(1) or Rule 5, it shall defer registration and invite the Competent Authority or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii), to remedy the irregularity found within a period of three months from the date on which the invitation was sent.

(b) If the irregularity found is not corrected within two months of the date of the invitation referred to in subparagraph (a), the International Bureau shall send a reminder of its invitation. The sending of such a reminder shall have no effect on the three-month period referred to in subparagraph (a).

(c) If the correction of the irregularity is not received by the International Bureau within the three-month period referred to in subparagraph (a), the application shall be rejected by the International Bureau, which shall inform the Competent Authority or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) as well as the Competent Authority, accordingly.

(d) Where, in accordance with subparagraph (c), the application is rejected, the International Bureau shall refund the fees paid in respect of the application, after deduction of an amount corresponding to half the registration fee referred to in Rule 8.

(2) [*Application Not Considered as Such*] If the application is not filed by the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii), it shall not be considered as such by the International Bureau and shall be returned to the sender.

*Rule 7**Entry in the International Register*

(1) *[Registration]* (a) Where the International Bureau finds that the application satisfies the conditions set out in Rules 3(1) and 5, it shall enter the appellation of origin or the geographical indication in the International Register.

(b) Where the application is also governed by the Lisbon Agreement or the 1967 Act, the International Bureau shall enter the appellation of origin in the International Register if it finds that the application satisfies the conditions set out in Rules 3(1) and 5 of the Regulations that apply in respect of the Lisbon Agreement or the 1967 Act.

(c) The International Bureau shall indicate per Contracting Party whether the international registration is governed by this Act or by the Lisbon Agreement or the 1967 Act.

(2) *[Contents of the Registration]* The international registration shall contain or indicate:

- (i) all the particulars given in the application;
- (ii) the language in which the International Bureau received the application;
- (iii) the number of the international registration;
- (iv) the date of the international registration.

(3) *[Certificate and Notification]* The International Bureau shall:

(i) send a certificate of international registration to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), to the beneficiaries or the legal entity referred to in Article 5(2)(ii) that requested the registration; and

(ii) notify the international registration to the Competent Authority of each Contracting Party.

(4) *[Implementation of Article 31(1)]* (a) In case of the ratification of, or accession to, this Act by a State that is party to the Lisbon Agreement or the 1967 Act, Rule 5(2) to (5) shall apply *mutatis mutandis* with regard to international registrations of appellations of origin effective under the Lisbon Agreement or the 1967 Act in respect of that State. The International Bureau shall verify with the Competent Authority concerned any modifications to be made, in view of the requirements of Rules 3(1) and 5, for the purpose of their registration under this Act and notify international registrations thus effected to all other Contracting Parties. Modifications shall be subject to payment of the fee specified in Rule 8(1)(ii).

(b) Any Contracting Party that is also party to the Lisbon Agreement or the 1967 Act shall, upon receipt of a notification under subparagraph (a), protect the appellation of origin concerned thenceforth under this Act, subject to any declaration of refusal or notification of invalidation that the Contracting Party had issued in respect of the appellation of origin under the Lisbon Agreement or the 1967 Act, which shall remain effective under this Act, unless the Contracting Party indicates otherwise. Any period granted under Article 5(6) of the Lisbon Agreement or the 1967 Act and still effective at the time the notification under subparagraph (a) is received shall, for its remainder, be subject to the provisions of Article 17.

Rule 8
Fees

(1) *[Amount of Fees]* The International Bureau shall collect the following fees, payable in Swiss francs:

- | | |
|--|-------|
| (i) fee for international registration | [500] |
| (ii) fee for each modification of an international registration | [200] |
| (iii) fee for providing an extract from the International Register | [90] |
| (iv) fee for providing an attestation or any other written information concerning the contents of the International Register | [80] |
| [(v) individual fees as referred to in paragraph (2)] | |

[(2) *[Establishment of the Amount of Individual Fees]* (a) Where a Contracting Party makes a declaration as referred to in Article 7(5) that it wants to receive an individual fee, as referred to in that provision, the amount of such fee shall be indicated in the currency used by the Competent Authority.

(b) Where the fee is indicated in the declaration referred to in subparagraph (a) in a currency other than Swiss currency, the Director General shall, after consultation with the Competent Authority of the Contracting Party, establish the amount of the fee in Swiss currency on the basis of the official exchange rate of the United Nations.

(c) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual fee has been indicated by a Contracting Party is higher or lower by at least 5% than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Competent Authority of that Contracting Party may ask the Director General to establish a new amount of the fee in Swiss currency according to the official exchange rate of the United Nations prevailing on the day preceding the day on which the request is made. The Director General shall proceed accordingly. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount on the website of the Organization.

(d) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual fee has been indicated by a Contracting Party is lower by at least 10% than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Director General shall establish a new amount of the fee in Swiss currency according to the current official exchange rate of the United Nations. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount on the web site of the Organization.

(3) *[Crediting of Individual Fees to the Accounts of the Contracting Parties Concerned]* Any individual fee paid to the International Bureau in respect of a Contracting Party shall be credited to the account of that Contracting Party with the International Bureau within the month following the month in the course of which the recording of the international registration for which that fee has been paid was effected.]

(4) *[Obligation to Use Swiss Currency]* All payments made under these Regulations to the International Bureau shall be in Swiss currency irrespective of the fact that, where the fees are paid through the Competent Authority, such Competent Authority may have collected those fees in another currency.

(5) *[Payment]* (a) Subject to subparagraph (b), the fees shall be paid directly to the International Bureau.

(b) The fees payable in connection with an application may be paid through the Competent Authority if the Competent Authority accepts to collect and forward such fees and the beneficiaries so wish. Any Competent Authority which accepts to collect and forward such fees shall notify that fact to the Director General.

(6) *[Modes of Payment]* Fees shall be paid to the International Bureau in accordance with the Administrative Instructions.

(7) *[Indications Accompanying the Payment]* At the time of the payment of any fee to the International Bureau, an indication must be given of the appellation of origin or the geographical indication concerned and the purpose of the payment.

(8) *[Date of Payment]* (a) Subject to subparagraph (b), any fee shall be considered to have been paid to the International Bureau on the day on which the International Bureau receives the required amount.

(b) Where the required amount is available in an account opened with the International Bureau and that Bureau has received instructions from the holder of the account to debit it, the fee shall be considered to have been paid to the International Bureau on the day on which the International Bureau receives an application or a request for the recording of a modification.

(9) *[Change in the Amount of the Fees]* Where the amount of any fee is changed, the amount valid on the date on which the fee was received by the International Bureau shall be applicable.

Chapter III

Refusal and Other Actions in Respect of International Registration

Rule 9

Refusal

(1) *[Notification to the International Bureau]* (a) A refusal shall be notified to the International Bureau by the Competent Authority of the concerned Contracting Party and shall be signed by that Competent Authority.

(b) The refusal shall be notified within a period of one year from the receipt of the notification of international registration under Article 6(4). In the case of Article 29(4), this time limit may be extended by another year.

(2) *[Contents of the Notification of Refusal]* A notification of refusal shall indicate or contain:

(i) the Competent Authority notifying the refusal;

(ii) the number of the relevant international registration, preferably accompanied by further information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication;

(iii) the grounds on which the refusal is based;

(iv) where the refusal is based on the existence of a prior right, as referred to in Article 13, the essential particulars of that prior right and, in particular, if it is constituted by a national, regional or international trademark application or registration, the date and number of such application or registration, the priority date (where appropriate), the name and address of the holder, a reproduction of the trademark, together with the list of relevant goods and services given in the trademark application or registration, it being understood that the list may be submitted in the language of the said application or registration;

[(v) in case of a partial refusal based on coexistence with a prior right, item (iv) shall apply *mutatis mutandis* in respect of such coexistence²;

(vi) where the refusal concerns only certain elements of the appellation of origin, or the geographical indication, an indication of the elements that it concerns;

(vii) the judicial or administrative remedies available to contest the refusal, together with the applicable time limits.

(3) *[Entry in the International Register and Notifications by the International Bureau]* Subject to Rule 10(1), the International Bureau shall enter in the International Register any refusal, together with the date on which the notification of refusal was sent to the International Bureau, and shall communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

² In the case of a partial refusal based on such coexistence with an appellation of origin, or a geographical indication, previously recorded in the International Register, the International Bureau shall supplement the International Register by entering cross-references between the two international registrations. Paragraph (3) shall apply *mutatis mutandis* with regard to the modification of the previously recorded international registration.]

Rule 10
Irregular Notification of Refusal

(1) *[Declaration of Refusal Not Considered as Such]* (a) A notification of refusal shall not be considered as such by the International Bureau:

(i) if it does not indicate the number of the international registration concerned, unless other information given in the declaration enables the registration to be identified without ambiguity;

(ii) if it does not indicate any ground for refusal;

(iii) if it is sent to the International Bureau after the expiry of the relevant time limit referred to in Rule 9(1);

(iv) if it is not notified to the International Bureau by the Competent Authority.

(b) Where subparagraph (a) applies, the International Bureau shall inform the Competent Authority that submitted the notification of refusal that the refusal is not considered as such by the International Bureau and has not been entered in the International Register, shall state the reasons therefore and shall, unless it is unable to identify the international registration concerned, communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

(2) *[Irregular Declaration]* If the notification of refusal contains an irregularity other than those referred to in paragraph (1), the International Bureau shall nevertheless enter the refusal in the International Register and shall communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting party of Origin. At the request of that Competent Authority or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii), the International Bureau shall invite the Competent Authority that submitted the notification of refusal to regularize the notification without delay.

Rule 11
Withdrawal of Refusal

(1) *[Notification to the International Bureau]* A refusal may be withdrawn, in part or in whole, at any time by the Competent Authority that notified it. The withdrawal of a refusal shall be notified to the International Bureau by the relevant Competent Authority and shall be signed by such authority.

(2) *[Contents of the Notification]* The notification of withdrawal of a refusal shall indicate:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication;

(ii) the reason for the withdrawal and, in case of a partial withdrawal, the particulars referred to in Rule 9(2) [(v) or] (vi);

(iii) the date on which the refusal was withdrawn.

(3) *[Entry in the International Register and Notifications by the International Bureau]*

The International Bureau shall enter in the International Register any withdrawal referred to in paragraph (1) and shall communicate a copy of the notification of withdrawal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 12

Notification of Grant of Protection

(1) *[Optional Statement of Grant of Protection]* (a) A Competent Authority of a Contracting Party which does not refuse the effects of an international registration may, within the time limit referred to in Rule 9(1), send to the International Bureau a statement confirming that protection is granted to the appellation of origin, or the geographical indication, that is the subject of an international registration.

(b) The statement shall indicate:

(i) the Competent Authority of the Contracting Party making the statement;

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication; and

(iii) the date of the statement.

(2) *[Optional Statement of Grant of Protection Following a Refusal]* (a) Where a Competent Authority that has previously submitted a notification of refusal wishes to withdraw that refusal, it may, instead of notifying the withdrawal of refusal in accordance with Rule 11(1), send to the International Bureau a statement to the effect that protection is granted to the relevant appellation of origin or geographical indication.

(b) The statement shall indicate:

(i) the Competent Authority of the Contracting Party making the statement;

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(iii) the reason for the withdrawal and, in case of a grant of protection that amounts to a partial withdrawal of refusal, the particulars referred to in Rule 9(2) [(v) or] (vi); and

(iv) the date on which protection was granted.

(3) *[Entry in the International Register and Notifications by the International Bureau]*

The International Bureau shall enter in the International Register any statement referred to in paragraphs (1) or (2) and communicate a copy of such statement to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 13

Notification of Invalidation of the Effects of an International Registration in a Contracting Party

(1) *[Notification of Invalidation to the International Bureau]* Where the effects of an international registration are invalidated in a Contracting Party, in whole or in part, and the invalidation is no longer subject to appeal, the Competent Authority of the concerned Contracting Party shall transmit to the International Bureau a notification of invalidation. The notification shall indicate or contain:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(ii) the authority that pronounced the invalidation;

(iii) the date on which the invalidation was pronounced;

(iv) where the invalidation is partial, the particulars referred to in Rule 9(2) [(v) or] (vi);

(v) the grounds on the basis of which the invalidation was pronounced;

(vi) a copy of the decision that invalidated the effects of the international registration.

(2) *[Entry in the International Register and Notifications by the International Bureau]*

The International Bureau shall enter the invalidation in the International Register together with the particulars referred to in items (i) to (v) of paragraph (1) and shall communicate a copy of the notification to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 14

Notification of Transitional Period Granted to Third Parties

(1) *[Notification to the International Bureau]* Where a third party has been granted a defined period of time in which to terminate the use of a registered appellation of origin, or a registered

geographical indication, in a Contracting Party, [in accordance with Article 17(1),] the Competent Authority of that Contracting Party shall notify the International Bureau accordingly. The notification shall indicate:

- (i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;
- (ii) the identity of the third party concerned;
- (iii) the period granted to the third party, preferably accompanied by information about the scope of the use during the transitional period;
- (iv) the date from which the defined period begins, it being understood that the date may not be later than one year and three months from the receipt of the notification of international registration under Article 6(4) or, in the case of Article 29(4), no later than two years and three months from such receipt.

(2) [*Desirable Duration*] The duration of the period granted to a third party shall not be longer than 15 years, it being understood that the period may depend on the specific situation of each case and that a period longer than ten years would be exceptional.

(3) [*Entry in the International Register and Notifications by the International Bureau*] Subject to the notification referred to in paragraph (1) being sent by the Competent Authority to the International Bureau before the date referred to in paragraph (1)(iv), the International Bureau shall enter such notification in the International Register together with the particulars shown therein and shall communicate a copy of the notification to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 15 *Modifications*

(1) [*Permissible Modifications*] The following modifications may be recorded in the International Register:

- (i) the addition or deletion of a beneficiary or some beneficiaries;
- (ii) a modification of the names or addresses of the beneficiaries;
- (iii) a modification of the limits of the geographical area of origin of the good or goods to which the appellation of origin, or the geographical indication, applies;
- (iv) a modification relating to the legislative or administrative act, the judicial or administrative decision, or the registration referred to in Rule 5(2)(a)(vii);

(v) a modification relating to the Contracting Party of Origin that does not affect the geographical area of origin of the good or goods to which the appellation of origin, or the geographical indication, applies;

(vi) a modification under Rule 16.

(2) *[Procedure]* A request for entry of a modification referred to in paragraph (1) shall be presented to the International Bureau by the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii), and shall be accompanied by the fee specified in Rule 8.

(3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any modification requested in accordance with paragraphs (1) and (2) together with the date of receipt of the request by the International Bureau, confirm the entry to the Competent Authority that requested the modification, and communicate such modification to the Competent Authorities of the other Contracting Parties.

(4) *[Optional Alternative]* In the case of Article 5(3), paragraphs (1) to (3) shall apply *mutatis mutandis*, it being understood that a request from the beneficiaries or from the legal entity referred to in Article 5(2)(ii) must indicate that the change is requested because of a corresponding change to the registration, the legislative or administrative act, or the judicial or administrative decision, on the basis of which the appellation of origin, or the geographical indication, had been granted protection in the Contracting Party of Origin; and that the entry of the modification in the International Register shall be confirmed to the concerned beneficiaries or legal entity by the International Bureau, which shall also inform the Competent Authority of the Contracting Party of Origin.

Rule 16 *Renunciation of Protection*

(1) *[Notification to the International Bureau]* The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time notify the International Bureau that protection of the appellation of origin, or the geographical indication, is renounced, in whole or in part, in respect of one or some of the Contracting Parties. The notification of renunciation of protection shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication.

(2) *[Withdrawal of a Renunciation]* Any renunciation may be withdrawn, in whole or in part, at any time by the Competent Authority that notified it or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, subject to payment of the fee for a modification [and any individual fees].

(3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any renunciation of protection referred to in paragraph (1), or any withdrawal of a renunciation referred to in paragraph (2), confirm the entry to the Competent Authority of the Contracting Party of Origin and, in the case of

Article 5(3), the beneficiaries or legal entity, while also informing the Competent Authority of the Contracting Party of Origin, and shall communicate the entry of such modification in the International Register to the Competent Authorities of each Contracting Party to which the renunciation, or the withdrawal of the renunciation, relates.

(4) *[Application of Rules 9 to 12]* The Competent Authority of a Contracting Party that receives a notification of the withdrawal of a renunciation may notify the International Bureau of the refusal of the effects of the international registration in its territory. The declaration shall be addressed to the International Bureau by such Competent Authority within a period of one year from the date of receipt of the notification by the International Bureau of the withdrawal of the renunciation. Rules 9 to 12 shall apply *mutatis mutandis*.

Rule 17

Cancellation of an International Registration

(1) *[Request for Cancellation]* The request for cancellation shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication.

(2) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any cancellation together with the particulars given in the request, confirm the entry to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii), while also informing the Competent Authority of the Contracting Party of Origin, and shall communicate the cancellation to the Competent Authorities of the other Contracting Parties.

Rule 18

Corrections Made to the International Register

(1) *[Procedure]* If the International Bureau, acting *ex officio* or at the request of the Competent Authority of the Contracting Party of Origin, finds that the International Register contains an error with respect to an international registration, it shall correct the Register accordingly.

(2) *[Optional Alternative]* In the case of Article 5(3), a request under paragraph (1) can also be submitted by the beneficiaries or by the legal entity referred to in Article 5(2)(ii). The beneficiaries or the legal entity shall be notified by the International Bureau of any correction concerning the international registration.

(3) *[Notification of Corrections to the Competent Authorities]* The International Bureau shall notify any correction of the International Register to the Competent Authorities of all Contracting Parties as well as, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii).

(4) *[Application of Rules 9 to 12]* Where the correction of an error concerns the appellation of origin or the geographical indication, or the good or goods to which the appellation of origin or the geographical indication applies, the Competent Authority of a Contracting Party has the right to

declare that it cannot ensure the protection of the appellation of origin or geographical indication after the correction. The declaration shall be addressed to the International Bureau by such Competent Authority within a period of one year from the date of notification by the International Bureau of the correction. Rules 9 to 12 shall apply *mutatis mutandis*.

Chapter IV **Miscellaneous Provisions**

Rule 19 *Publication*

The International Bureau shall publish all entries made in the International Register.

Rule 20 *Extracts from the International Register and Other Information* *Provided by the International Bureau*

- (1) *[Information on the Contents of the International Register]* Extracts from the International Register or any other information on the contents of the Register shall be provided by the International Bureau to any person so requesting, on payment of the fee specified in Rule 8.
- (2) *[Communication of Provisions, Decisions or the Registration Under Which an Appellation of Origin or a Geographical Indication Is Protected]* (a) Any person may request from the International Bureau a copy in the original language of the provisions, the decisions or the registration referred to in Rule 5(2)(a)(vii), on payment of the fee specified in Rule 8.
- (b) Where such documents have already been communicated to the International Bureau, the latter shall transmit without delay a copy to the person who has made the request.
- (c) If such a document has never been communicated to the International Bureau, the latter shall request a copy of it from the Competent Authority of the Contracting Party of Origin and shall transmit the document, on receipt, to the person who has made the request.

Rule 21 *Signature*

Where the signature of a Competent Authority is required under these Regulations, such signature may be printed or replaced by the affixing of a facsimile or an official seal.

Rule 22 *Date of Dispatch of Various Communications*

Where the notifications referred to in Rules 9(1), 14(1), 16(4) and 18(4) are communicated through a postal service, the date of dispatch shall be determined by the postmark. If the postmark is illegible or missing, the International Bureau shall treat the communication concerned as if it had

been sent 20 days before the date on which it was received. Where such notifications are sent through a mail delivery service, the date of dispatch shall be determined by the information provided by such delivery service on the basis of the details of the mailing as recorded by it. Such notifications may also be communicated by facsimile or by electronic means, as provided for in the Administrative Instructions.

Rule 23

Modes of Notification by the International Bureau

- (1) *[Notification of the International Registration]* The notification of the international registration, referred to in Rule 7(3)(ii), or the notification of the withdrawal of a renunciation referred to in Rule 16(3), shall be addressed by the International Bureau to the Competent Authority of each Contracting Party concerned by any means enabling the International Bureau to establish the date on which the notification was received, as provided for in the Administrative Instructions.
- (2) *[Other Notifications]* Any other notification by the International Bureau referred to in these Regulations shall be addressed to the Competent Authorities by any means enabling the International Bureau to establish that the notification has been received.

Rule 24

Administrative Instructions

- (1) *[Establishment of Administrative Instructions; Matters Governed by Them]* (a) The Director General shall establish Administrative Instructions and may modify them. Before establishing or modifying the Administrative Instructions, the Director General shall consult the Competent Authorities of the Contracting Parties which have direct interest in the proposed Administrative Instructions or their proposed modification.
- (b) The Administrative Instructions shall deal with matters in respect of which these Regulations expressly refer to such Instructions and with details in respect of the application of these Regulations.
- (2) *[Supervision by the Assembly]* The Assembly may invite the Director General to modify any provision of the Administrative Instructions and the Director General shall act upon any such invitation.
- (3) *[Publication and Effective Date]* (a) The Administrative Instructions and any modification thereof shall be published.
- (b) Each publication shall specify the date on which the published provisions become effective.
- (4) *[Conflict with the Act or These Regulations]* In the case of conflict between, on the one hand, any provision of the Administrative Instructions and, on the other hand, any provision of the Act or these Regulations, the latter shall prevail.

**COMPARISON OF THE TEXTS OF THE LISBON AGREEMENT FOR THE
PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR
INTERNATIONAL REGISTRATION AND THE GENEVA ACT OF THE
LISBON AGREEMENT ON APPELLATIONS OF ORIGIN AND
GEOGRAPHICAL INDICATIONS AND THE REGULATIONS
THEREUNDER**

Lisbon Agreement for the Protection of
Appellations of Origin and their International
Registration
(of October 31, 1958, as revised at Stockholm
on July 14, 1967, and as amended on
September 28, 1979)

Geneva Act of the Lisbon Agreement
on Appellations of Origin
and Geographical Indications
(done at Geneva on May 20, 2015)

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Article 1
Establishment of a Special Union; Protection of
Appellations of Origin Registered at the International
*Bureau*¹

[See Article 9]

(1) The countries to which this Agreement applies constitute a Special Union within the framework of the Union for the Protection of Industrial Property.

(2) They undertake to protect on their territories, in accordance with the terms of this Agreement, the appellations of origin of products of the other countries of the Special Union, recognized and protected as such in the country of origin and registered at the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau" or "the Bureau") referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as "the Organization").

¹ Articles have been given titles to facilitate their identification. There are no titles in the signed French text. The title of Article 6 has been modified, compared to the previous edition.

Chapter I
Introductory and General Provisions

Article 1
Abbreviated Expressions

For the purposes of this Act, unless expressly stated otherwise:

- (i) "Lisbon Agreement" means the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958;
- (ii) "1967 Act" means the Lisbon Agreement as revised at Stockholm on July 14, 1967, and amended on September 28, 1979;
- (iii) "this Act" means the Lisbon Agreement on Appellations of Origin and Geographical Indications, as established by the present Act;
- (iv) "Regulations" means the Regulations as referred to in Article 25;
- (v) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised and amended;
- (vi) "appellation of origin" means a

denomination as referred to in Article 2(1)(i);

(vii) “geographical indication” means an indication as referred to in Article 2(1)(ii);

(viii) “International Register” means the International Register maintained by the International Bureau in accordance with Article 4 as the official collection of data concerning international registrations of appellations of origin and geographical indications, regardless of the medium in which such data are maintained;

(ix) “international registration” means an international registration recorded in the International Register;

(x) “application” means an application for international registration;

(xi) “registered” means entered in the International Register in accordance with this Act;

(xii) “geographical area of origin” means a geographical area as referred to in Article 2(2);

(xiii) “trans-border geographical area” means a geographical area situated in, or covering, adjacent Contracting Parties;

(xiv) “Contracting Party” means any State or intergovernmental organization party to this Act;

(xv) “Contracting Party of Origin” means the Contracting Party where the geographical area of origin is situated or the Contracting Parties where the trans-border geographical area of origin is situated;

(xvi) “Competent Authority” means an entity designated in accordance with Article 3;

(xvii) “beneficiaries” means the natural persons or legal entities entitled under the law of the Contracting Party of Origin to use an appellation of origin or a geographical indication;

(xviii) “intergovernmental organization” means an intergovernmental organization eligible to become party to this Act in accordance with Article 28(1)(iii);

(xix) “Organization” means the World Intellectual Property Organization;

(xx) “Director General” means the Director General of the Organization;

“International Bureau” means the International Bureau of the Organization.

COMPARISON OF THE TEXTS OF THE LISBON AGREEMENT AND THE GENEVA ACT

Article 2

Definition of Notions of Appellation of Origin and Country of Origin

(1) In this Agreement, "appellation of origin" means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

(2) The country of origin is the country whose name, or the country in which is situated the region or locality whose name, constitutes the appellation of origin which has given the product its reputation.

Article 2

Subject-Matter

(1) *[Appellations of Origin and Geographical Indications]* This Act applies in respect of:

(i) any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation; as well as

(ii) any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

(2) *[Possible Geographical Areas of Origin]* A geographical area of origin as described in paragraph (1) may consist of the entire territory of the Contracting Party of Origin or a region, locality or place in the Contracting Party of Origin. This does not exclude the application of this Act in respect of a geographical area of origin, as described in paragraph (1), consisting of a trans-border geographical area, or a part thereof.

Article 3

Content of Protection

Protection shall be ensured against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as "kind," "type," "make," "imitation," or the like.

[See Article 11]

Article 4

Protection by Virtue of Other Texts

The provisions of this Agreement shall in no way exclude the protection already granted to appellations of origin in each of the countries of the Special Union by virtue of other international instruments, such as the Paris Convention of March 20, 1883, for the Protection of Industrial Property and its subsequent revisions, and the Madrid Agreement of April 14, 1891, for the Repression of False or Deceptive Indications of Source on Goods and its subsequent revisions, or by virtue of national legislation or court decisions.

[See Article 10(2)]

Article 3
Competent Authority

Each Contracting Party shall designate an entity which shall be responsible for the administration of this Act in its territory and for communications with the International Bureau under this Act and the Regulations. The Contracting Party shall notify the name and contact details of such Competent Authority to the International Bureau, as specified in the Regulations.

Article 4
International Register

The International Bureau shall maintain an International Register recording international registrations effected under this Act, under the Lisbon Agreement and the 1967 Act, or under both, and data relating to such international registrations.

Chapter II
Application and International Registration

Article 5
International Registration; Refusal; Notifications; Use Tolerated for a Fixed Period

(1) The registration of appellations of origin shall be effected with the International Bureau, at the request of the Authorities of the countries of the Special Union, in the name of any natural persons or legal entities, public or private, having, according to their national legislation, the right to use such appellations.

(2) The International Bureau shall, without delay, notify the Authorities of the various countries of the Special Union of such registrations, and shall publish them in a periodical.

(3) The Authority of any country may declare that it cannot ensure the protection of an appellation of origin whose registration has been notified to it, but only in so far as its declaration is notified to the International Bureau, together with an indication of the grounds therefor, within a period of one year from the receipt of the notification of registration, and provided that such declaration is not detrimental, in the country concerned, to the other forms of protection of the appellation which the owner thereof may be entitled to claim under Article 4, above.

(4) Such declaration may not be opposed by the Authorities of the countries of the Union after the expiration of the period of one year provided for in the

Article 5
Application

(1) *[Place of Filing]* Applications shall be filed with the International Bureau.

(2) *[Application Filed by Competent Authority]* Subject to paragraph (3), the application for the international registration of an appellation of origin or a geographical indication shall be filed by the Competent Authority in the name of:

(i) the beneficiaries; or

(ii) a natural person or legal entity having legal standing under the law of the Contracting Party of Origin to assert the rights of the beneficiaries or other rights in the appellation of origin or geographical indication.

(3) *[Application Filed Directly]* (a) Without prejudice to paragraph (4), if the legislation of the Contracting Party of Origin so permits, the application may be filed by the beneficiaries or by a natural person or legal entity referred to in paragraph (2)(ii).

(b) Subparagraph (a) applies subject to a declaration from the Contracting Party that its legislation so permits. Such declaration may be made by the Contracting Party at the time of deposit of its instrument of ratification or accession or at any later time. Where the

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foregoing paragraph.

(5) The International Bureau shall, as soon as possible, notify the Authority of the country of origin of any declaration made under the terms of paragraph (3) by the Authority of another country. The interested party, when informed by his national Authority of the declaration made by another country, may resort, in that other country, to all the judicial and administrative remedies open to the nationals of that country.

(6) If an appellation which has been granted protection in a given country pursuant to notification of its international registration has already been used by third parties in that country from a date prior to such notification, the competent Authority of the said country shall have the right to grant to such third parties a period not exceeding two years to terminate such use, on condition that it advise the International Bureau accordingly during the three months following the expiration of the period of one year provided for in paragraph (3), above.

declaration is made at the time of the deposit of its instrument of ratification or accession, it shall take effect upon the entry into force of this Act with respect to that Contracting Party. Where the declaration is made after the entry into force of this Act with respect to the Contracting Party, it shall take effect three months after the date on which the Director General has received the declaration.

(4) *[Possible Joint Application in the Case of a Trans-border Geographical Area]* In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may, in accordance with their agreement, file an application jointly through a commonly designated Competent Authority.

(5) *[Mandatory Contents]* The Regulations shall specify the mandatory particulars that must be included in the application, in addition to those specified in Article 6(3).

(6) *[Optional Contents]* The Regulations may specify the optional particulars that may be included in the application.

*Article 6
International Registration*

(1) *[Formal Examination by the International Bureau]* Upon receipt of an application for the international registration of an appellation of origin or a geographical indication in due form, as specified in the Regulations, the International Bureau shall register the appellation of origin, or the geographical indication, in the International Register.

(2) *[Date of International Registration]* Subject to paragraph (3), the date of the international registration shall be the date on which the application was received by the International Bureau.

(3) *[Date of International Registration Where Particulars Missing]* Where the application does not contain all the following particulars:

(i) the identification of the Competent Authority or, in the case of Article 5(3), the applicant or applicants;

(ii) the details identifying the beneficiaries and, where applicable, the natural person or legal entity referred to in Article 5(2)(ii);

(iii) the appellation of origin, or the geographical indication, for which international registration is sought;

(iv) the good or goods to which the appellation of origin, or the geographical indication, applies;

the date of the international registration shall be the date on which the last of the missing particulars is received by the International Bureau.

(4) *[Publication and Notification of International Registrations]* The International Bureau shall, without delay, publish each international registration and notify the Competent Authority of each Contracting Party of the international registration.

(5) *[Date of Effect of International Registration]*

(a) Subject to subparagraph (b), a registered appellation of origin or geographical indication shall, in each Contracting Party that has not refused protection in accordance with Article 15, or that has sent to the International Bureau a notification of grant of protection in accordance with Article 18, be protected from the date of the international registration.

(b) A Contracting Party may, in a declaration, notify the Director General that, in accordance with its national or regional legislation, a registered appellation of origin or geographical indication is protected from a date that is mentioned in the declaration, which date shall however not be later than the date of expiry of the time limit for refusal specified in the Regulations in accordance with Article 15(1)(a).

Article 6

Shield Against Becoming Generic

[See Article 12]

An appellation which has been granted protection in one of the countries of the Special Union pursuant to the procedure under Article 5 cannot, in that country, be deemed to have become generic, as long as it is protected as an appellation of origin in the country of origin.

Article 7

Period of Validity of Registration; Fee

Article 7

Fees

(1) Registration effected with the International Bureau in conformity with Article 5 shall ensure, without renewal, protection for the whole of the period referred to in the foregoing Article.

(2) A single fee shall be paid for the registration of each appellation of origin.

(1) *[International Registration Fee]* International registration of each appellation of origin, and each geographical indication, shall be subject to payment of the fee specified in the Regulations.

(2) *[Fees for Other Entries in the International Register]* The Regulations shall specify the fees to be paid in respect of other entries in the International Register and for the supply of extracts, attestations, or other information concerning the contents of the international registration.

(3) *[Fee Reductions]* Reduced fees shall be established by the Assembly in respect of certain international registrations of appellations of origin, and in respect of certain international registrations of geographical indications, in particular those in respect of

which the Contracting Party of Origin is a developing country or a least-developed country.

(4) *[Individual Fee]* (a) Any Contracting Party may, in a declaration, notify the Director General that the protection resulting from international registration shall extend to it only if a fee is paid to cover its cost of substantive examination of the international registration. The amount of such individual fee shall be indicated in the declaration and can be changed in further declarations. The said amount may not be higher than the equivalent of the amount required under the national or regional legislation of the Contracting Party diminished by the savings resulting from the international procedure. Additionally, the Contracting Party may, in a declaration, notify the Director General that it requires an administrative fee relating to the use by the beneficiaries of the appellation of origin or the geographical indication in that Contracting Party.

(b) Non-payment of an individual fee shall, in accordance with the Regulations, have the effect that protection is renounced in respect of the Contracting Party requiring the fee.

Article 8

Period of Validity of International Registrations

(1) *[Dependency]* International registrations shall be valid indefinitely, on the understanding that the protection of a registered appellation of origin or geographical indication shall no longer be required if the denomination constituting the appellation of origin, or the indication constituting the geographical indication, is no longer protected in the Contracting Party of Origin.

(2) *[Cancellation]* (a) The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time request the International Bureau to cancel the international registration concerned.

(b) In case the denomination constituting a registered appellation of origin, or the indication constituting a registered geographical indication, is no longer protected in the Contracting Party of Origin, the Competent Authority of the Contracting Party of Origin shall request cancellation of the international registration.

Article 8 *Legal Proceedings*

[See Article 14]

Legal action required for ensuring the protection of appellations of origin may be taken in each of the countries of the Special Union under the provisions of the national legislation:

1. at the instance of the competent Authority or at the request of the public Prosecutor;
2. by any interested party, whether a natural person or a legal entity, whether public or private.

Chapter III Protection

[See Article 1]

Article 9 Commitment to Protect

Each Contracting Party shall protect registered appellations of origin and geographical indications on its territory, within its own legal system and practice but in accordance with the terms of this Act, subject to any refusal, renunciation, invalidation or cancellation that may become effective with respect to its territory, and on the understanding that Contracting Parties that do not distinguish in their national or regional legislation as between appellations of origin and geographical indications shall not be required to introduce such a distinction into their national or regional legislation.

Article 10 Protection Under Laws of Contracting Parties or Other Instruments

(1) [Form of Legal Protection] Each Contracting Party shall be free to choose the type of legislation under which it establishes the protection stipulated in this Act, provided that such legislation meets the substantive requirements of this Act.

[See Article 4]

(2) [Protection Under Other Instruments] The provisions of this Act shall not in any way affect any other protection a Contracting Party may accord in respect of registered appellations of origin or registered geographical indications under its national or regional legislation, or under other international instruments.

(3) [Relation to Other Instruments] Nothing in this Act shall derogate from any obligations that Contracting Parties have to each other under any other international instruments, nor shall it prejudice any rights that a Contracting Party has under any other international instruments.

Article 9 Assembly of the Special Union

[See Article 22]

- (1) (a) The Special Union shall have an Assembly consisting of those countries which have ratified or acceded to this Act.

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(b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(2) (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Agreement;

(ii) give directions to the International Bureau concerning the preparation for revision conferences, due account being taken of any comments made by those countries of the Special Union which have not ratified or acceded to this Act;

(iii) modify the Regulations, including the fixation of the amount of the fee referred to in Article 7(2) and other fees relating to international registration;

(iv) review and approve the reports and activities of the Director General of the Organization (hereinafter designated as "the Director General") concerning the Special Union, and give him all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the biennial budget of the Special Union, and approve its final accounts;

(vi) adopt the financial regulations of the Special Union;

(vii) establish such committees of experts and working groups as it may deem necessary to achieve the objectives of the Special Union;

(viii) determine which countries not members of the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 9 to 12;

(x) take any other appropriate action designed to further the objectives of the

Special Union;

(xi) perform such other functions as are appropriate under this Agreement.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) (a) Each country member of the Assembly shall have one vote.

(b) One-half of the countries members of the Assembly shall constitute a quorum.

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 12(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(f) A delegate may represent, and vote in the name of, one country only.

(g) Countries of the Special Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(4) (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of one-fourth of the countries members of the Assembly.

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(c) The agenda of each session shall be prepared by the Director General.

(5) The Assembly shall adopt its own rules of procedure.

[See Article 3]

Article 11

Protection in Respect of Registered Appellations of Origin and Geographical Indications

(1) *[Content of Protection]* Subject to the provisions of this Act, in respect of a registered appellation of origin or a registered geographical indication, each Contracting Party shall provide the legal means to prevent:

(a) use of the appellation of origin or the geographical indication

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

(ii) in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies or services, if such use would indicate or suggest a connection between those goods or services and the beneficiaries of the appellation of origin or the geographical indication, and would be likely to damage their interests, or, where applicable, because of the reputation of the appellation of origin or geographical indication in the Contracting Party concerned, such use would be likely to impair or dilute in an unfair manner, or take unfair advantage of, that reputation;

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

(2) *[Content of Protection in Respect of Certain Uses]* Paragraph (1)(a) shall also apply to use of the appellation of origin or geographical indication amounting to its imitation, even if the true origin of the goods is indicated, or if the appellation of origin or the geographical indication is used in translated form or is accompanied by terms such as “style”, “kind”, “type”, “make”, “imitation”, “method”, “as produced in”, “like”, “similar” or the like¹.

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

¹ Agreed Statement concerning Article 11(2): For the purposes of this Act, it is understood that where certain elements of the denomination or indication constituting the appellation of origin or geographical indication have a generic character in the Contracting Party of Origin, their protection under this subparagraph shall not be required in the other Contracting Parties. For greater certainty, a refusal or invalidation of a trademark, or a finding of infringement, in the Contracting Parties under the terms of Article 11 cannot be based on the component that has a generic character.

Article 10
International Bureau

[See Article 23]

(1) (a) International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may have been established by the Assembly.

(c) The Director General shall be the chief executive of the Special Union and shall represent the Special Union.

(2) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly and of such committees of experts or working groups as may have been established by the Assembly. The Director General, or a staff member designated by him, shall be ex officio secretary of those bodies.

(3) (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences to revise the provisions of the Agreement other than Articles 9 to 12.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for revision conferences.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at those conferences.

(4) The International Bureau shall carry out any other tasks assigned to it.

Article 11
Finances

[See Article 24]

(1) (a) The Special Union shall have a budget.

(b) The budget of the Special Union shall include the income and expenses specific to the Special Union, its

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contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Special Union shall be financed from the following sources:

(i) international registration fees collected under Article 7(2) and fees and charges due for other services rendered by the International Bureau in relation to the Special Union;

(ii) proceeds from the sale of, or royalties on, the publications of the International Bureau concerning the Special Union;

(iii) gifts, bequests, and subventions;

(iv) rents, interest, and other miscellaneous income;

(v) contributions of the countries of the Special Union, if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses of the Special Union.

(4) (a) The amount of the fee referred to in Article 7(2) shall be fixed by the Assembly on the proposal of the Director General.

(b) The amount of the said fee shall be so fixed that the revenue of the Special Union should, under normal circumstances, be sufficient to cover the expenses of the International Bureau for maintaining the international registration service, without requiring payment of the contributions referred to in paragraph (3)(v), above.

(5) (a) For the purpose of establishing its contribution referred to in paragraph (3)(v), each country of the Special Union shall belong to the same class as it belongs to in the Paris Union for the Protection of Industrial Property, and shall pay its annual contributions on the basis of the same number of units as is fixed for that class in that Union.

(b) The annual contribution of each country of the Special Union shall be an amount in the same proportion to the total sum to be contributed to the annual budget of the Special Union by all countries as the number of the units of the class to which it belongs is to the total of the units of all contributing countries.

(c) The date on which contributions are to be paid shall be fixed by the Assembly.

(d) A country which is in arrears in the payment of its contributions may not exercise its right to vote in any of the organs of the Special Union if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, such a country may be allowed to continue to exercise its right to vote in that organ if, and as long as, the latter is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(e) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(6) Subject to the provisions of paragraph (4)(a), the amount of fees and charges due for other services rendered by the International Bureau in relation to the Special Union shall be established, and shall be reported to the Assembly, by the Director General.

(7) (a) The Special Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Special Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country as a member of the Paris Union for the Protection of Industrial Property to the budget of the said Union for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(8) (a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

(b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the

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obligation to grant advances, by written notification.
Denunciation shall take effect three years after the end of the year in which it has been notified.

(9) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

[See Article 6]

Article 12
Protection Against Becoming Generic

Subject to the provisions of this Act, registered appellations of origin and registered geographical indications cannot be considered to have become generic² in a Contracting Party.

Article 12
Amendment of Articles 9 to 12

[See Article 27]

(1) Proposals for the amendment of Articles 9, 10, 11, and the present Article, may be initiated by any country member of the Assembly, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 9, and to the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Special Union shall bind only those countries which have notified their acceptance of such amendment.

² Agreed Statement concerning Article 12: For the purposes of this Act, it is understood that Article 12 is without prejudice to the application of the provisions of this Act concerning prior use, as, prior to international registration, the denomination or indication constituting the appellation of origin or geographical indication may already, in whole or in part, be generic in a Contracting Party other than the Contracting Party of Origin, for example, because the denomination or indication, or part of it, is identical with a term customary in common language as the common name of a good or service in such Contracting Party, or is identical with the customary name of a grape variety in such Contracting Party.

Article 13
Regulations; Revision

[See Articles 25 and 26]

(1) The details for carrying out this Agreement are fixed in the Regulations.

(2) This Agreement may be revised by conferences held between the delegates of the countries of the Special Union.

Article 13
Safeguards in Respect of Other Rights

(1) *[Prior Trademark Rights]* The provisions of this Act shall not prejudice a prior trademark applied for or registered in good faith, or acquired through use in good faith, in a Contracting Party. Where the law of a Contracting Party provides a limited exception to the rights conferred by a trademark to the effect that such a prior trademark in certain circumstances may not entitle its owner to prevent a registered appellation of origin or geographical indication from being granted protection or used in that Contracting Party, protection of the registered appellation of origin or geographical indication shall not limit the rights conferred by that trademark in any other way.

(2) *[Personal Name Used in Business]* The provisions of this Act shall not prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

(3) *[Rights Based on a Plant Variety or Animal Breed Denomination]* The provisions of this Act shall not prejudice the right of any person to use a plant variety or animal breed denomination in the course of trade, except where such plant variety or animal breed denomination is used in such a manner as to mislead the public.

(4) *[Safeguards in the Case of Notification of Withdrawal of Refusal or a Grant of Protection]* Where a Contracting Party that has refused the effects of an international registration under Article 15 on the ground of use under a prior trademark or other right, as referred to in this Article, notifies the withdrawal of that refusal under Article 16 or a grant of protection under Article 18, the resulting protection of the appellation of origin or geographical indication shall not prejudice that right or its use, unless the protection was granted following the cancellation, non renewal, revocation or invalidation of the right.

Article 14

[See Article 28]

*Ratification and Accession; Entry into Force;
Reference to Article 24 of Paris Convention (Territories);
Accession to the Act of 1958*

(1) Any country of the Special Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it.

(2) (a) Any country outside the Special Union, which is party to the Paris Convention for the Protection of Industrial Property, may accede to this Act and thereby become a member of the Special Union.

(b) Notification of accession shall, of itself, ensure, in the territory of the acceding country, the benefits of the foregoing provisions to appellations of origin which, at the time of accession, are the subject of international registration.

(c) However, any country acceding to this Agreement may, within a period of one year, declare in regard to which appellations of origin, already registered at the International Bureau, it wishes to exercise the right provided for in Article 5(3).

(3) Instruments of ratification and accession shall be deposited with the Director General.

(4) The provisions of Article 24 of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement.

(5) (a) With respect to the first five countries which have deposited their instruments of ratification or accession, this Act shall enter into force three months after the deposit of the fifth such instrument.

(b) With respect to any other country, this Act shall enter into force three months after the date on which its ratification or accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of ratification or accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(6) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

(7) After the entry into force of this Act, a country may accede to the original Act of October 31, 1958, of this Agreement only in conjunction with ratification of, or accession to, this Act.

[See Article 8]

Article 14
Enforcement Procedures and Remedies

Each Contracting Party shall make available effective legal remedies for the protection of registered appellations of origin and registered geographical indications and provide that legal proceedings for ensuring their protection may be brought by a public authority or by any interested party, whether a natural person or a legal entity and whether public or private, depending on its legal system and practice.

Article 15
Duration of the Agreement; Denunciation

[See Article 32]

- (1) This Agreement shall remain in force as long as five countries at least are party to it.
- (2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of the original Act of October 31, 1958, of this Agreement and shall affect only the country making it, the Agreement remaining in full force and effect as regards the other countries of the Special Union.
- (3) Denunciation shall take effect one year after the day on which the Director General has received the notification.
- (4) The right of denunciation provided for by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Special Union.

Article 16
Applicable Acts

(1) (a) This Act shall, as regards the relations between the countries of the Special Union by which it has been ratified or acceded to, replace the original Act of October 31, 1958.

(b) However, any country of the Special Union which has ratified or acceded to this Act shall be bound by the original Act of October 31, 1958, as regards its relations with countries of the Special Union which have not ratified or acceded to this Act.

(2) Countries outside the Special Union which become party to this Act shall apply it to international registrations of appellations of origin effected at the International Bureau at the request of the Authority of any country of the Special Union not party to this Act, provided that such registrations satisfy, with respect to the said countries, the requirements of this Act. With regard to international

registrations effected at the International Bureau at the request of the Authorities of the said countries outside the Special Union which become party to this Act, such countries recognize that the aforesaid country of the Special Union may demand compliance with the requirements of the original Act of October 31, 1958.

Chapter IV
Refusal and Other Actions in Respect of International Registrations

Article 15
Refusal

[See Article 5(3) to (5)]

(1) *[Refusal of Effects of International Registration]*
(a) Within the time limit specified in the Regulations, the Competent Authority of a Contracting Party may notify the International Bureau of the refusal of the effects of an international registration in its territory. The notification of refusal may be made by the Competent Authority ex officio, if its legislation so permits, or at the request of an interested party.

(b) The notification of refusal shall set out the grounds on which the refusal is based.

(2) *[Protection Under Other Instruments]* The notification of a refusal shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party to which the refusal relates.

(3) *[Obligation to Provide Opportunity for Interested Parties]* Each Contracting Party shall provide a reasonable opportunity, for anyone whose interests would be affected by an international registration, to request the Competent Authority to notify a refusal in respect of the international registration.

(4) *[Registration, Publication and Communication of Refusals]* The International Bureau shall record the refusal and the grounds for the refusal in the International Register. It shall publish the refusal and the grounds for the refusal and shall communicate the notification of refusal to the Competent Authority of the Contracting Party of Origin or, where the application has been filed directly in accordance with Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

(5) *[National Treatment]* Each Contracting Party shall make available to interested parties affected by a refusal the same judicial and administrative remedies that are available to its own nationals in respect of the refusal of

protection for an appellation of origin or a geographical indication.

Article 17
Signature, Languages, Depository Functions

[See Articles 33 and 34]

(1) (a) This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) This Act shall remain open for signature at Stockholm until January 13, 1968.

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Special Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries of the Special Union of signatures, deposits of instruments of ratification or accession, entry into force of any provisions of this Act, denunciations, and declarations pursuant to Article 14(2) (c) and (4).

Article 16
Withdrawal of Refusal

A refusal may be withdrawn in accordance with the procedures specified in the Regulations. A withdrawal shall be recorded in the International Register.

Article 18
Transitional Provisions

(1) Until the first Director General assumes office, references in this Act to the International Bureau of the Organization or to the Director General shall be construed as references to the Bureau of the Union established by the Paris Convention for the Protection of Industrial Property or its Director, respectively.

(2) Countries of the Special Union not having ratified or acceded to this Act may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided for under Articles 9 to 12 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall

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give written notification to that effect to the Director General; such notification shall be effective from the date

of its receipt. Such countries shall be deemed to be members of the Assembly until the expiration of the said period.

[See Article 5(6)]

Article 17
Transitional Period

(1) *[Option to Grant Transitional Period]* Without prejudice to Article 13, where a Contracting Party has not refused the effects of an international registration on the ground of prior use by a third party or has withdrawn such refusal or has notified a grant of protection, it may, if its legislation so permits, grant a defined period as specified in the Regulations, for terminating such use.

(2) *[Notification of a Transitional Period]* The Contracting Party shall notify the International Bureau of any such period, in accordance with the procedures specified in the Regulations.

Article 18
Notification of Grant of Protection

The Competent Authority of a Contracting Party may notify the International Bureau of the grant of protection to a registered appellation of origin or geographical indication. The International Bureau shall record any such notification in the International Register and publish it.

Article 19
Invalidation

(1) *[Opportunity to Defend Rights]* Invalidation of the effects, in part or in whole, of an international registration in the territory of a Contracting Party may be pronounced only after having given the beneficiaries an opportunity to defend their rights. Such opportunity shall also be given to the natural person or legal entity referred to in Article 5(2)(ii).

(2) *[Notification, Recordal and Publication]* The Contracting Party shall notify the invalidation of the effects of an international registration to the International Bureau, which shall record the invalidation in the International Register and publish it.

(3) *[Protection Under Other Instruments]* Invalidation shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party that invalidated the effects of the international registration.

Article 20
Modifications and Other Entries in the International Register

Procedures for the modification of international registrations and other entries in the International Register shall be specified in the Regulations.

Chapter V
Administrative Provisions

Article 21
Membership of the Lisbon Union

The Contracting Parties shall be members of the same Special Union as the States party to the Lisbon Agreement or the 1967 Act, whether or not they are party to the Lisbon Agreement or the 1967 Act.

[See Article 9]

Article 22
Assembly of the Special Union

(1) *[Composition]* (a) The Contracting Parties shall be members of the same Assembly as the States party to the 1967 Act.

(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(c) Each delegation shall bear its own expenses.

(2) *[Tasks]* (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Act;

(ii) give directions to the Director General concerning the preparation of revision conferences referred to in Article 26(1), due account being taken of any comments made by those members of the Special Union which have not ratified or acceded to this Act;

(iii) amend the Regulations;

(iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him or her all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the biennial budget of the Special Union, and approve its final accounts;

(vi) adopt the financial Regulations of the

Special Union;

(vii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Special Union;

(viii) determine which States, intergovernmental and non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 22 to 24 and 27;

(x) take any other appropriate action to further the objectives of the Special Union and perform any other functions as are appropriate under this Act.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) *[Quorum]* (a) One-half of the members of the Assembly which have the right to vote on a given matter shall constitute a quorum for the purposes of the vote on that matter.

(b) Notwithstanding the provisions of subparagraph (a), if, in any session, the number of the members of the Assembly which are States, have the right to vote on a given matter and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States and have the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States, have the right to vote on the said matter and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(4) *[Taking Decisions in the Assembly]* (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

(ii) any Contracting Party that is an intergovernmental organization may vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Act. No such intergovernmental organization shall participate in the vote if any one of its member States exercises its right to vote, and *vice versa*.

(c) On matters concerning only States that are bound by the 1967 Act, Contracting Parties that are not bound by the 1967 Act shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.

(5) *[Majorities]* (a) Subject to Articles 25(2) and 27(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(6) *[Sessions]* (a) The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the members of the Assembly or on the Director General's own initiative.

(c) The agenda of each session shall be prepared by the Director General.

(7) *[Rules of Procedure]* The Assembly shall adopt its own rules of procedure.

[See Article 10]

Article 23
International Bureau

(1) *[Administrative Tasks]* (a) International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the Secretariat of the Assembly and of such committees and working groups as may have been established by the Assembly.

(c) The Director General shall be the Chief Executive of the Special Union and shall represent the Special Union.

(2) *[Role of the International Bureau in the Assembly and Other Meetings]* The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the

committees and working groups established by the Assembly. The Director General, or a staff member designated by him, shall be *ex officio* Secretary of such a body.

(3) *[Conferences]* (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with intergovernmental and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(4) *[Other Tasks]* The International Bureau shall carry out any other tasks assigned to it in relation to this Act.

[See Article 11]

Article 24
Finances

(1) *[Budget]* The income and expenses of the Special Union shall be reflected in the budget of the Organization in a fair and transparent manner.

(2) *[Sources of Financing of the Budget]* The income of the Special Union shall be derived from the following sources:

(i) fees collected under Article 7(1) and (2);

(ii) proceeds from the sale of, or royalties on, the publications of the International Bureau;

(iii) gifts, bequests, and subventions;

(iv) rent, investment revenue, and other, including miscellaneous, income;

(v) special contributions of the Contracting Parties or any alternative source derived from the Contracting Parties or beneficiaries, or both, if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses, as decided by the Assembly.

(3) *[Fixing of Fees; Level of the Budget]* (a) The amounts of the fees referred to in paragraph (2) shall be fixed by the Assembly on the proposal of the Director General and shall be so fixed that, together with the income derived from other sources under paragraph (2), the revenue of the Special Union should, under normal circumstances, be sufficient to cover the expenses of the International Bureau for maintaining the international registration service.

(b) If the Program and Budget of the Organization is not adopted before the beginning of a new financial period, the authorization to the Director General to incur obligations and make payments shall be at the same level as it was in the previous financial period.

(4) *[Establishing the Special Contributions Referred to in Paragraph (2)(v)]* For the purpose of establishing its contribution, each Contracting Party shall belong to the same class as it belongs to in the context of the Paris Convention or, if it is not a Contracting Party of the Paris Convention, as it would belong to if it were a Contracting Party of the Paris Convention. Intergovernmental organizations shall be considered to belong to contribution class I (one), unless otherwise unanimously decided by the Assembly. The contribution shall be partially weighted according to the number of registrations originating in the Contracting Party, as decided by the Assembly.

(5) *[Working Capital Fund]* The Special Union shall have a working capital fund, which shall be constituted by payments made by way of advance by each member of the Special Union when the Special Union so decides. If the fund becomes insufficient, the Assembly may decide to increase it. The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General. Should the Special Union record a surplus of income over expenditure in any financial period, the Working Capital Fund advances may be repaid to each member proportionate to their initial payments upon proposal by the Director General and decision by the Assembly.

(6) *[Advances by Host State]* (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(7) *[Auditing of Accounts]* The auditing of the accounts shall be effected by one or more of the States members of the Special Union or by external auditors, as provided in the Financial Regulations of the Organization. They shall be designated, with their agreement, by the Assembly.

[See Article 13]

*Article 25
Regulations*

(1) *[Subject-Matter]* The details for carrying out this Act shall be established in the Regulations.

(2) *[Amendment of Certain Provisions of the Regulations]* (a) The Assembly may decide that certain provisions of the Regulations may be amended only by unanimity or only by a three fourths majority.

(b) In order for the requirement of unanimity or a three-fourths majority no longer to apply in the future to the amendment of a provision of the Regulations, unanimity shall be required.

(c) In order for the requirement of unanimity or a three-fourths majority to apply in the future to the amendment of a provision of the Regulations, a three-fourths majority shall be required.

(3) *[Conflict Between This Act and the Regulations]* In the case of conflict between the provisions of this Act and those of the Regulations, the former shall prevail.

**Chapter VI
Revision and Amendment**

[See Article 13]

*Article 26
Revision*

(1) *[Revision Conferences]* This Act may be revised by Diplomatic Conferences of the Contracting Parties. The convocation of any Diplomatic Conference shall be decided by the Assembly.

(2) *[Revision or Amendment of Certain Articles]* Articles 22 to 24 and 27 may be amended either by a revision conference or by the Assembly according to the provisions of Article 27.

[See Article 12]

*Article 27
Amendment of Certain Articles by the Assembly*

(1) *[Proposals for Amendment]* (a) Proposals for the amendment of Articles 22 to 24, and the present Article, may be initiated by any Contracting Party or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.

(2) *[Majorities]* Adoption of any amendment to the Articles referred to in paragraph (1) shall require a three-fourths majority, except that adoption of any amendment to Article 22, and to the present paragraph, shall require a four-fifths majority.

(3) *[Entry into Force]* (a) Except where subparagraph (b) applies, any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of those Contracting Parties which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on that amendment.

(b) Any amendment to Article 22(3) or (4) or to this subparagraph shall not enter into force if, within six months of its adoption by the Assembly, any Contracting Party notifies the Director General that it does not accept such amendment.

(c) Any amendment which enters into force in accordance with the provisions of this paragraph shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

Chapter VII Final Provisions

[See Article 14]

Article 28 Becoming Party to This Act

(1) *[Eligibility]* Subject to Article 29 and paragraphs (2) and (3) of the present Article,

(i) any State which is party to the Paris Convention may sign and become party to this Act;

(ii) any other State member of the Organization may sign and become party to this Act if it declares that its legislation complies with the provisions of the Paris Convention concerning appellations of origin, geographical indications and trademarks;

(iii) any intergovernmental organization may sign and become party to this Act, provided that at least one member State of that intergovernmental organization is party to the Paris Convention and provided that the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Act and that, under the constituting treaty of the intergovernmental organization, legislation applies under which regional

titles of protection can be obtained in respect of geographical indications.

(2) *[Ratification or Accession]* Any State or intergovernmental organization referred to in paragraph (1) may deposit

(i) an instrument of ratification, if it has signed this Act; or

(ii) an instrument of accession, if it has not signed this Act.

(3) *[Effective Date of Deposit]* (a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.

(b) The effective date of the deposit of the instrument of ratification or accession of any State that is a member State of an intergovernmental organization and in respect of which the protection of appellations of origin or geographical indications can only be obtained on the basis of legislation applying between the member States of the intergovernmental organization shall be the date on which the instrument of ratification or accession of that intergovernmental organization is deposited, if that date is later than the date on which the instrument of the said State has been deposited. However, this subparagraph does not apply with regard to States that are party to the Lisbon Agreement or the 1967 Act and shall be without prejudice to the application of Article 31 with regard to such States.

Article 29

Effective Date of Ratifications and Accessions

(1) *[Instruments to Be Taken into Consideration]* For the purposes of this Article, only instruments of ratification or accession that are deposited by States or intergovernmental organizations referred to in Article 28(1) and that have an effective date according to Article 28(3) shall be taken into consideration.

(2) *[Entry into Force of This Act]* This Act shall enter into force three months after five eligible parties referred to in Article 28 have deposited their instruments of ratification or accession.

(3) *[Entry into Force of Ratifications and Accessions]*
 (a) Any State or intergovernmental organization that has deposited its instrument of ratification or accession three months or more before the date of entry into force of this Act shall become bound by this Act on the date of the entry into force of this Act.

(b) Any other State or intergovernmental organization shall become bound by this Act three months

after the date on which it has deposited its instrument of ratification or accession or at any later date indicated in that instrument.

(4) *[International Registrations Effected Prior to Accession]* In the territory of the acceding State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies, the provisions of this Act shall apply in respect of appellations of origin and geographical indications already registered under this Act at the time the accession becomes effective, subject to Article 7(4) as well as the provisions of Chapter IV, which shall apply *mutatis mutandis*. The acceding State or intergovernmental organization may also specify, in a declaration attached to its instrument of ratification or accession, an extension of the time limit referred to in Article 15(1), and the periods referred to in Article 17, in accordance with the procedures specified in the Regulations in that respect.

Article 30
Prohibition of Reservations

No reservations to this Act are permitted.

Article 31
Application of the Lisbon Agreement and the 1967 Act

(1) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act]* This Act alone shall be applicable as regards the mutual relations of States party to both this Act and the Lisbon Agreement or the 1967 Act. However, with regard to international registrations of appellations of origin effective under the Lisbon Agreement or the 1967 Act, the States shall accord no lower protection than is required by the Lisbon Agreement or the 1967 Act.

(2) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act and States Party to the Lisbon Agreement or the 1967 Act Without Being Party to This Act]* Any State party to both this Act and the Lisbon Agreement or the 1967 Act shall continue to apply the Lisbon Agreement or the 1967 Act, as the case may be, in its relations with States party to the Lisbon Agreement or the 1967 Act that are not party to this Act.

[See Article 15]

Article 32
Denunciation

(1) *[Notification]* Any Contracting Party may denounce this Act by notification addressed to the Director General.

(2) *[Effective Date]* Denunciation shall take effect one year after the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Act to any application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

[See Article 17]

Article 33
Languages of this Act; Signature

(1) *[Original Texts; Official Texts]* (a) This Act shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) *[Time Limit for Signature]* This Act shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 34
Depositary

The Director General shall be the depositary of this Act.

Regulations under the Lisbon Agreement for
the Protection of Appellations of Origin and
their International Registration
(as in force on January 1, 2016)

Regulations Under The Geneva Act of the Lisbon
Agreement on Appellations of Origin and
Geographical Indications
(Done At Geneva On May 20, 2015)

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Chapter 1
General Provisions

Rule 1
Abbreviated Expressions

For the purposes of these Regulations,

(i) “Agreement” means the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, as revised in Stockholm on July 14, 1967, and modified on September 28, 1979;

(ii) “appellation of origin” means an appellation of origin as defined in Article 2(1) of the Agreement;

(iii) “international registration” means the international registration of an appellation of origin effected under the Agreement;

(iv) “international application” means an application for international registration;

(v) “International Register” means the official collection of data concerning international registrations maintained by the International Bureau, whose entry is provided for in the Agreement or these Regulations, whatever the medium on which such data are kept;

(vi) “contracting country” means a country party to the Agreement;

(vii) “country of origin” means the contracting country as defined in Article 2(2) of the Agreement;

(viii) “International Bureau” means the International Bureau of the World Intellectual Property Organization;

(ix) “official form” means a form drawn up by the International Bureau;

(x) “competent authority” means the authority referred to in Rule 4(1)(a), (b) or (c) of these Regulations;

(xi) “holder of the right to use the appellation of origin” means any natural person or legal entity referred to in Article 5(1) of the Agreement;

(xii) “declaration of refusal” means the declaration referred to in Article 5(3) of the Agreement;

(xiii) “Bulletin” means the periodical referred to in Article 5(2) of the Agreement, whatever the medium

Chapter I
Introductory and General Provisions

Rule 1
Abbreviated Expressions

For the purposes of these Regulations, unless expressly stated otherwise:

(i) abbreviated expressions defined in Article 1 shall have the same meaning in these Regulations;

(ii) “Rule” refers to a rule of these Regulations;

(iii) “Administrative Instructions” means the Administrative Instructions referred to in Rule 24;

(iv) “Official Form” means a form drawn up by the International Bureau.

used for its publication;

(xiv) “Administrative Instructions” means the Administrative Instructions referred to in Rule 23bis.

Rule 2
Calculation of Time Limits

(1) *[Periods Expressed in Years]* A period expressed in years shall expire, in the relevant subsequent year, in the month having the same name and on the day having the same number as the month and the day of the event from which the period starts to run, except that, where the event occurred on February 29 and in the relevant subsequent year February ends on the 28th, the period shall expire on February 28.

(2) *[Periods Expressed in Months]* A period expressed in months shall expire, in the relevant subsequent month, on the day which has the same number as the day of the event from which the period starts to run, except that, where the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month.

(3) *[Expiry on a Day Which Is Not a Working Day for the International Bureau or a Competent Authority]* If a period expires on a day which is not a working day for the International Bureau or a competent authority, the period shall expire, notwithstanding paragraphs (1) and (2), on the first subsequent working day.

Rule 3
Working Languages

(1) *[International Application]* The international application shall be in English, French or Spanish.

(2) *[Communications Subsequent to the International Application]* Any communication concerning an international application or an international registration exchanged between the International Bureau and a competent authority shall be in English, French or Spanish, at the choice of the authority concerned.

(3) *[Entries in the International Register and Publications]* Entries in the International Register and publications in the Bulletin shall be in English, French and Spanish. The translations needed for those purposes shall be done by the International Bureau. However, the International Bureau shall not translate the appellation of origin.

Rule 2
Calculation of Time Limits

(1) *[Periods Expressed in Years]* A period expressed in years shall expire in the subsequent year on the same day and month as the day and month of the event from which the period starts to run, except that, where the event occurred on February 29, the period shall expire on February 28 of the subsequent year.

(2) *[Periods Expressed in Months]* A period expressed in months shall expire in the relevant subsequent month on the same day as the day of the event from which the period starts to run, except that, where the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month.

(3) *[Expiry on a Day Which Is Not a Working Day for the International Bureau or a Competent Authority]* If the period of a time limit applying to the International Bureau or a Competent Authority expires on a day which is not a working day for the International Bureau or a Competent Authority, the period shall, notwithstanding paragraphs (1) and (2), expire for the International Bureau or the Competent Authority, as the case may be, on the first subsequent working day.

Rule 3
Working Languages

(1) *[Application]* The application shall be in English, French or Spanish.

(2) *[Communications Subsequent to the International Application]* Any communication concerning an application or an international registration shall be in English, French or Spanish, at the choice of the Competent Authority concerned or, in the case of Article 5(3), at the choice of the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii). Any translation needed for the purposes of these procedures shall be made by the International Bureau.

(3) *[Entries in the International Register and Publication]* Entries in the International Register and publication of such entries by the International Bureau shall be in English, French and Spanish. The translations needed for those purposes shall be made by the International Bureau. However, the International Bureau shall not translate the appellation of origin or the geographical indication.

(4) *[Transliteration and Translations of the Appellation of Origin]* Where the competent authority gives a transliteration of the appellation of origin in accordance with Rule 5(2)(c) or one or more translations of the appellation of origin, in accordance with Rule 5(3)(ii), the International Bureau shall not check that they are correct.

*Rule 4
Competent Authority*

(1) *[Notification to the International Bureau]* Each contracting country shall notify to the International Bureau the name and address, as well as any change concerning the name or address,

(a) of its authority competent

(i) to submit an international application in accordance with Rule 5, to remedy an irregularity contained in the international application in accordance with Rule 6(1), to request the entry in the International Register of a modification to an international registration in accordance with Rule 13(2), to notify the International Bureau that it renounces protection in one or more contracting countries in accordance with Rule 14(1), to request the International Bureau to cancel an international registration in accordance with Rule 15(1), to request correction of the International Register in accordance with Rule 17(1) and to communicate to the International Bureau, in accordance with Rule 19(2)(b), the documents referred to in Rule 5(3)(v), and

(ii) to receive the notifications of the International Bureau referred to in Rules 9(3), 10(1) and (2), 11(3), 12(2) and 16(2),

(b) of its authority competent

(i) to notify a declaration of refusal, to notify the withdrawal of a declaration of refusal in accordance with Rule 11, to send a statement of grant of protection in accordance with Rule 11bis², to notify an invalidation in accordance with Rule 16(1), to request correction of the International Register in accordance with Rule 17(1) and to declare, in accordance with Rule 17(3), that it cannot ensure the protection of a corrected international registration and

(4) *[Transliteration of the Appellation of Origin or Geographical Indication]* Where the application contains a transliteration of the appellation of origin or the geographical indication in accordance with Rule 5(2)(b), the International Bureau shall not check whether the transliteration is correct.

*Rule 4
Competent Authority*

(1) *[Notification to the International Bureau]* Upon accession, each Contracting Party shall notify the International Bureau of the name and contact details of its Competent Authority, i.e. the authority it has designated to present applications and other notifications to, and receive notifications from, the International Bureau. In addition, such Competent Authority shall make available information on the applicable procedures in the Contracting Party for the enforcement of rights in appellations of origin and geographical indications.

² When the Lisbon Union Assembly adopted Rule 11bis, it understood that, with respect to contracting countries already party to the Agreement, no new declaration is required to the extent that the competent authority for sending a statement of grant of protection is the same as that already notified under Rule 4(1)(b) before the entry into force of Rule 11bis.

(ii) to receive the notifications of the International Bureau referred to in Rules 7(1), 13(3), 14(2), 15(2) and 17(2), and

(c) of its authority competent to give notice to the International Bureau that a period, which may not exceed two years, has been granted to third parties in accordance with Article 5(6) of the Agreement.

(2) *[One Authority or Different Authorities]* The notification referred to in paragraph (1) may indicate a single authority or different authorities. However, only one authority may be designated with respect to each of subparagraphs (a) to (c).

2) *[One Authority or Different Authorities]* The notification referred to in paragraph (1) shall, preferably, indicate a single Competent Authority. When a Contracting Party notifies different Competent Authorities, this notification shall clearly indicate their respective competence in respect of the presentation of applications to, and the receipt of notifications from, the International Bureau.

(3) *[Modifications]* Contracting Parties shall notify the International Bureau of any change in the particulars referred to in paragraph (1). However, the International Bureau may *ex officio* take cognizance of a change in the absence of a notification where it has clear indications that such a change has taken place.

Chapter 2 International Applications

Rule 5

Requirements Concerning the International Application

(1) *[Presentation]* An international application shall be presented to the International Bureau by the competent authority of the country of origin on the official form provided to that end and shall be signed by that authority.

(2) *[Mandatory Contents of the International Application]* (a) The international application shall indicate:

(i) the country of origin;

(ii) the holder or holders of the right to use the appellation of origin, designated collectively or, where collective designation is not possible, by name;

(iii) the appellation of origin for which registration is sought, in the official language of the country of origin or, where the country of origin has more than one official language, in one or more of those official languages;

Chapter II Application and International Registration

Rule 5

Requirements Concerning the Application

(1) *[Filing]* The application shall be filed with the International Bureau on the Official Form provided to that end and shall be signed by the Competent Authority presenting it or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii).

(2) *[Application – Mandatory Contents]* (a) The application shall indicate:

(i) the Contracting Party of Origin;

(ii) the Competent Authority presenting the application or, in the case of Article 5(3), details identifying the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii);

(iii) the beneficiaries, designated collectively or, where collective designation is not possible, by name, or the natural person or legal entity having legal standing under the law of the Contracting Party of Origin to assert the rights of the beneficiaries or other rights in the appellation of origin or the geographical indication;

(iv) the appellation of origin or the geographical indication for which registration is sought, in the official language of the Contracting Party of Origin or, where the Contracting Party of Origin has more than one official language, in the official language or languages in which the appellation of origin or the geographical indication is

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(iv) the product to which the appellation applies;

(v) the area of production of the product;

(vi) the title and date of the legislative or administrative provisions, the judicial decisions or the date and number of the registration by virtue of which the appellation of origin is protected in the country of origin.

(b) Where the names of the holder or holders of the right to use the appellation of origin or the area of production are in characters other than Latin characters, they must be indicated in the form of a transliteration into Latin characters; the transliteration shall use the phonetics of the language of the international application.

(c) Where the appellation of origin is in characters other than Latin characters, the indication referred to in subparagraph (a)(iii) must be accompanied by a transliteration into Latin characters; the transliteration shall use the phonetics of the language of the international application.

(d) The international application shall be accompanied by a registration fee the amount of which is specified in Rule 23.

contained in the registration, act or decision, by virtue of which protection is granted in the Contracting Party of Origin.¹

(v) the good or goods to which the appellation of origin, or the geographical indication, applies, as precisely as possible;

(vi) the geographical area of origin or the geographical area of production of the good or goods;

(vii) the identifying details, including the date of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin.

(b) If they are not in Latin characters, the application shall include a transliteration of the names of the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), of the geographical area of origin, and of the appellation of origin or the geographical indication for which registration is sought. The transliteration shall use the phonetics of the language of the application¹.

(c) The application shall be accompanied by the registration fee and any other fees, as specified in Rule 8.

(3) *[Application – Particulars Concerning the Quality, Reputation or Characteristic(s)]* (a) To the extent that a Contracting Party requires that, for the protection of a registered appellation of origin or geographical indication in its territory, the application further indicate particulars concerning, in the case of an appellation of origin, the quality or characteristics of the good and its connection with the geographical environment of the geographical area of production, and, in the case of a geographical indication, the quality, reputation or other characteristic of the good and its connection with the geographical area of origin, it shall notify that requirement to the Director General.

(b) In order to meet such a requirement, particulars as referred to in subparagraph (a) shall be provided in a working language, but they shall not be translated by the International Bureau.

(c) An application that is not in accordance with a requirement as notified by a Contracting Party under subparagraph (a) shall, subject to Rule 6, have the effect that protection is renounced in respect of that Contracting Party.

(4) *[Application – Signature and/or Intention to Use]* (a) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication the application be signed by a person having legal standing to assert the rights conferred by such protection, it shall notify that requirement to the Director General.

¹ The application of Rule 5(2)(a)(iv) and Rule 5(2)(b) is subject to the provisions of Rule 3(3) and (4).

(b) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication the application be accompanied by a declaration of intention to use the registered appellation of origin or geographical indication in its territory or a declaration of intention to exercise control over the use by others of the registered appellation of origin or geographical indication in its territory, it shall notify that requirement to the Director General.

(c) An application that is not signed in accordance with subparagraph (a), or that is not accompanied by a declaration indicated in subparagraph (b), shall, subject to Rule 6, have the effect that protection is renounced in respect of the Contracting Party requiring such signature or declaration, as notified under subparagraphs (a) and (b).

(5) [*Application – Protection Not Claimed for Certain Elements of the Appellation of Origin or the Geographical Indication*] The application shall indicate whether or not, to the best knowledge of the applicant, the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin, specifies that protection is not granted for certain elements of the appellation of origin or the geographical indication. Any such elements shall be indicated in the application in a working language.

(3) [*Optional Contents of the International Application*] The international application may indicate or contain:

(i) the addresses of the holders of the right to use the appellation of origin;

(ii) one or more translations of the appellation of origin, in as many languages as the competent authority of the country of origin wishes;

(iii) a statement to the effect that protection is not claimed for certain elements of the appellation of origin;

(iv) a declaration that protection is renounced in one or more contracting countries, designated by name;

(v) a copy in the original language of the provisions, decisions or registration referred to in paragraph (2)(a)(vi);

(vi) any further information the competent authority of the country of origin wishes to provide concerning the protection granted to the appellation of origin in that country, such as additional particulars of the area of production of the product and a description of the connection between the quality or characteristics of the product and its geographical environment.

(6) [*Application – Optional Contents*] The application may indicate or contain:

(i) the addresses of the beneficiaries;

[See Rule 5 (3) (iv)]

(ii) a declaration that protection is renounced in one or more Contracting Parties;

(iii) a copy in the original language of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin or the geographical indication in the Contracting Party of Origin;

(iv) a statement to the effect that protection is not claimed for certain elements, other than those referred to in paragraph (5) of the appellation of origin or the geographical indication.

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Rule 6
Irregular Applications

(1) *[Examination of the Application and Correction of Irregularities]* (a) Subject to paragraph (2), if the International Bureau finds that an international application does not satisfy the conditions set out in Rule 3(1) or Rule 5(1) and (2), it shall defer registration and invite the competent authority to remedy the irregularity found within a period of three months from the date of such invitation.

(b) If the competent authority has not corrected the irregularity found within two months of the date of the invitation referred to in subparagraph (a), the International Bureau shall address to that authority a reminder of its invitation. The sending of such a reminder shall have no effect on the three-month period referred to in subparagraph (a).

(c) If the correction of the irregularity is not received by the International Bureau within the three-month period referred to in subparagraph (a), the international application shall be rejected by the International Bureau which shall inform the competent authority of the country of origin thereof.

(d) Where, in accordance with subparagraph (c), the international application is rejected, the International Bureau shall refund the fees paid in respect of the application, after deduction of an amount corresponding to half the registration fee referred to in Rule 23.

(2) *[International Applications Not Considered as Such]* If the international application is not presented to the International Bureau by the competent authority of the country of origin, it shall not be considered as such by the International Bureau and shall be returned to the sender.

Rule 6
Irregular Applications

(1) *[Examination of the Application and Correction of Irregularities]* (a) Subject to paragraph (2), if the International Bureau finds that an application does not satisfy the conditions set out in Rule 3(1) or Rule 5, it shall defer registration and invite the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), to remedy the irregularity found within a period of three months from the date on which the invitation was sent.

(b) If the irregularity found is not corrected within two months of the date of the invitation referred to in subparagraph (a), the International Bureau shall send a reminder of its invitation. The sending of such a reminder shall have no effect on the three-month period referred to in subparagraph (a).

(c) If the correction of the irregularity is not received by the International Bureau within the three-month period referred to in subparagraph (a), the application shall, subject to subparagraph (d), be rejected by the International Bureau, which shall inform the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority, accordingly.

(d) In the case of an irregularity with respect to a requirement based on a notification made under Rule 5(3) or (4), or on a declaration made under Article 7(4), if the correction of the irregularity is not received by the International Bureau within the three-month period referred to in subparagraph (a), the protection resulting from the international registration shall be considered to be renounced in the Contracting Party having made the notification or the declaration.

(e) Where, in accordance with subparagraph (c), the application is rejected, the International Bureau shall refund the fees paid in respect of the application, after deduction of an amount corresponding to half the registration fee referred to in Rule 8.

(2) *[Application Not Considered as Such]* If the application is not filed by the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), it shall not be considered as such by the International Bureau and shall be returned to the sender.

Chapter 3 International Registration

Rule 7

Entry of the Appellation of Origin in the International Register

(1) *[Registration, Certificate and Notification]* Where the International Bureau finds that an international application satisfies the conditions set out in Rules 3(1) and 5, it shall enter the appellation of origin in the International Register, shall send a certificate of international registration to the authority that requested the registration and shall notify the international registration to the competent authority of those other contracting countries in respect of which protection has not been renounced.

(2) *[Contents of the Registration]* An international registration shall contain or indicate:

- (i) all the particulars given in the international application;
- (ii) the language in which the International Bureau received the international application;
- (iii) the number of the international registration;
- (iv) the date of the international registration.

Rule 7

Entry in the International Register

(1) *[Registration]* (a) Where the International Bureau finds that the application satisfies the conditions set out in Rules 3(1) and 5, it shall enter the appellation of origin or the geographical indication in the International Register.

(b) Where the application is also governed by the Lisbon Agreement or the 1967 Act, the International Bureau shall enter the appellation of origin in the International Register if it finds that the application satisfies the conditions set out in Rules 3(1) and 5 of the Regulations that apply in respect of the Lisbon Agreement or the 1967 Act.

(c) The International Bureau shall indicate per Contracting Party whether the international registration is governed by this Act or by the Lisbon Agreement or the 1967 Act.

(2) *[Contents of the Registration]* The international registration shall contain or indicate:

- (i) all the particulars given in the application;
- (ii) the language in which the International Bureau received the application;
- (iii) the number of the international registration;
- (iv) the date of the international registration.

(3) *[Certificate and Notification]* The International Bureau shall:

(i) send a certificate of international registration to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), to the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) that requested the registration; and

(ii) notify the international registration to the Competent Authority of each Contracting Party.

(4) *[Implementation of Article 31(1)]* (a) In case of the ratification of, or accession to, this Act by a State that is party to the Lisbon Agreement or the 1967 Act, Rule 5(2) to (4) shall apply *mutatis mutandis* with regard to international registrations or appellations of origin effective under the Lisbon Agreement or the 1967 Act in respect of that State. The International Bureau shall verify with the Competent Authority concerned any modifications to be made, in view of the requirements of Rules 3(1) and 5(2)

to (4), for the purpose of their registration under this Act and notify international registrations thus effected to all other Contracting Parties. Modifications shall be subject to payment of the fee specified in Rule 8(1)(ii).

(b) Any declaration of refusal or notification of invalidation issued by a Contracting Party that is also party to the Lisbon Agreement or the 1967 Act shall remain effective under this Act, unless the Contracting Party notifies a withdrawal of refusal under Article 16 or a grant of protection under Article 18.

(c) Where subparagraph (b) does not apply, any Contracting Party that is also party to the Lisbon Agreement or the 1967 Act shall, upon receipt of a notification under subparagraph (a), continue to protect the appellation of origin concerned thenceforth also under this Act, unless the Contracting Party indicates otherwise. Any period granted under Article 5(6) of the Lisbon Agreement or the 1967 Act and still effective at the time the notification under subparagraph (a) is received shall, for its remainder, be subject to the provisions of Article 17.

Rule 8

Date of the International Registration and of its Effects

(1) [*Irregularities Affecting the Date of the International Registration*] Where an international application does not contain all the following particulars:

- (i) the country of origin,
- (ii) the holders of the right to use the appellation of origin,
- (iii) the appellation of origin for which registration is sought,
- (iv) the product to which the appellation applies,

the international registration shall bear the date on which the last of the missing particulars is received by the International Bureau.

(2) [*Date of the International Registration in All Other Cases*] In all other cases, the international registration shall bear the date on which the international application was received by the International Bureau.

(3) [*Date of Effect of International Registration*] (a) An appellation of origin that is the subject of an international registration shall, in each contracting country that has not declared in accordance with Article 5(3) that it cannot ensure the protection of the appellation, or that has sent to the International Bureau a statement of grant of protection in accordance with Rule 11*bis*, be protected from the date of the international registration or, where a contracting country has made a declaration in accordance

with subparagraph (b), from the date mentioned in that declaration.

(b) A contracting country may, in a declaration, notify the Director General that, in accordance with the law of that country, an appellation of origin that is the subject of an international registration is protected from a date that is mentioned in the declaration, which date shall however not be later than the date of expiry of the period of one year referred to in Article 5(3) of the Agreement.

[See Rule 23]

Rule 8
Fees

(1) *[Amount of Fees]* The International Bureau shall collect the following fees², payable in Swiss francs:

- (i) fee for international registration ...
- (ii) fee for each modification of an international registration ...
- (iii) fee for providing an extract from the International Register ...
- (iv) fee for providing an attestation or any other written information concerning the contents of the International Register ...
- (v) individual fees as referred to in paragraph (2) ...

(2) *[Establishment of the Amount of Individual Fees]*

(a) Where a Contracting Party makes a declaration as referred to in Article 7(4) that it wants to receive an individual fee, as referred to in that provision, the amount of such fee shall be indicated in the currency used by the Competent Authority.

(b) Where the fee is indicated in the declaration referred to in subparagraph (a) in a currency other than Swiss currency, the Director General shall, after consultation with the Competent Authority of the Contracting Party, establish the amount of the fee in Swiss currency on the basis of the official exchange rate of the United Nations.

(c) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual fee has been indicated by a Contracting Party is higher or lower by at least 5 per cent than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Competent Authority of that

² The amounts of the fees are to be decided by the Assembly.

Contracting Party may ask the Director General to establish a new amount of the fee in Swiss currency according to the official exchange rate of the United Nations prevailing on the day preceding the day on which the request is made. The Director General shall proceed accordingly. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount on the website of the Organization.

(d) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual fee has been indicated by a Contracting Party is lower by at least 10 per cent than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Director General shall establish a new amount of the fee in Swiss currency according to the current official exchange rate of the United Nations. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount on the web site of the Organization.

(3) *[Crediting of Individual Fees to the Accounts of the Contracting Parties Concerned]* Any individual fee paid to the International Bureau in respect of a Contracting Party shall be credited to the account of that Contracting Party with the International Bureau within the month following the month in the course of which the recording of the international registration for which that fee has been paid was effected.

(4) *[Obligation to Use Swiss Currency]* All payments made under these Regulations to the International Bureau shall be in Swiss currency irrespective of the fact that, where the fees are paid through the Competent Authority, such Competent Authority may have collected those fees in another currency.

(5) *[Payment]* (a) Subject to subparagraph (b), the fees shall be paid directly to the International Bureau.

(b) The fees payable in connection with an application may be paid through the Competent Authority if the Competent Authority accepts to collect and forward such fees and the beneficiaries so wish. Any Competent Authority which accepts to collect and forward such fees shall notify that fact to the Director General.

(6) *[Modes of Payment]* Fees shall be paid to the International Bureau in accordance with the Administrative Instructions.

(7) *[Indications Accompanying the Payment]* At the time of the payment of any fee to the International Bureau, an indication must be given of the appellation of origin or the geographical indication concerned and the purpose of the payment.

(8) *[Date of Payment]* (a) Subject to subparagraph (b), any fee shall be considered to have been paid to the International Bureau on the day on which the International Bureau receives the required amount.

(b) Where the required amount is available in an account opened with the International Bureau and that Bureau has received instructions from the holder of the account to debit it, the fee shall be considered to have been paid to the International Bureau on the day on which the International Bureau receives an application or a request for the recording of a modification.

(9) *[Change in the Amount of the Fees]* Where the amount of any fee is changed, the amount valid on the date on which the fee was received by the International Bureau shall be applicable.

Chapter 4
Declarations of Refusal of Protection; Optional
Statements of Grant of Protection

Rule 9
Declaration of Refusal

(1) *[Notification to the International Bureau]* A declaration of refusal shall be notified to the International Bureau by the competent authority of the contracting country for which the refusal is issued and shall be signed by that authority.

(2) *[Contents of a Declaration of Refusal]* A declaration of refusal shall relate to a single international registration and shall indicate or contain:

- (i) the number of the international registration concerned, preferably accompanied by further information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin;
- (ii) the grounds on which the refusal is based;
- (iii) where the refusal is based on the existence of a prior right, the essential particulars of that prior right and, in particular, if it is constituted by a national, regional or international trademark application or registration, the date and filing number, the priority date (where appropriate), the date and registration number (if available), the name and address of the holder, a reproduction of the trademark, together with the list of

Chapter III
Refusal and Other Actions in Respect of International
Registration

Rule 9
Refusal

(1) *[Notification to the International Bureau]* (a) A refusal shall be notified to the International Bureau by the Competent Authority of the concerned Contracting Party and shall be signed by that Competent Authority.

(b) The refusal shall be notified within a period of one year from the receipt of the notification of international registration under Article 6(4). In the case of Article 29(4), this time limit may be extended by another year.

(2) *[Contents of the Notification of Refusal]* A notification of refusal shall indicate or contain:

- (i) the Competent Authority notifying the refusal;
- (ii) the number of the relevant international registration, preferably accompanied by further information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication;
- (iii) the grounds on which the refusal is based;
- (iv) where the refusal is based on the existence of a prior right, as referred to in Article 13, the essential particulars of that prior right and, in particular, if it is constituted by a national, regional or international

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relevant goods and services given in the trademark application or registration, it being understood that the list may be submitted in the language of the said application or registration;

(iv) where the refusal concerns only certain elements of the appellation of origin, those elements that it concerns;

(v) the judicial or administrative remedies that may be exercised against the refusal together with the applicable time limits.

(3) *[Entry in the International Register and Notification to the Competent Authority of the Country of Origin]* Subject to Rule 10(1), the International Bureau shall enter in the International Register any refusal, together with the date on which the declaration of refusal was sent to the International Bureau, and shall notify a copy of the declaration to the competent authority of the country of origin.

*Rule 10
Irregular Declaration of Refusal*

(1) *[Declaration of Refusal Not Considered as Such]*

(a) A declaration of refusal shall not be considered as such by the International Bureau:

(i) if it does not indicate the number of the international registration concerned, unless other information given in the declaration enables the registration to be identified without ambiguity;

(ii) if it does not indicate any grounds for refusal;

(iii) if it is sent to the International Bureau after the expiry of the one-year period referred to in Article 5(3) of the Agreement;

(iv) if it is not notified to the International Bureau by the competent authority.

(b) Where subparagraph (a) applies, the International Bureau shall, unless it is unable to identify the international registration concerned, notify a copy of the declaration of refusal to the competent authority of the country of origin and shall inform the authority that notified the declaration of refusal that the latter is not considered as such by the International Bureau and that

trademark application or registration, the date and number of such application or registration, the priority date (where appropriate), the name and address of the holder, a reproduction of the trademark, together with the list of relevant goods and services given in the trademark application or registration, it being understood that the list may be submitted in the language of the said application or registration;

(v) where the refusal concerns only certain elements of the appellation of origin, or the geographical indication, an indication of the elements that it concerns;

(vi) the judicial or administrative remedies available to contest the refusal, together with the applicable time limits.

(3) *[Entry in the International Register and Notifications by the International Bureau]* Subject to Rule 10(1), the International Bureau shall enter in the International Register any refusal, together with the date on which the notification of refusal was sent to the International Bureau, and shall communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

*Rule 10
Irregular Notification of Refusal*

(1) *[Declaration of Refusal Not Considered as Such]*

(a) A notification of refusal shall not be considered as such by the International Bureau:

(i) if it does not indicate the number of the international registration concerned, unless other information given in the declaration enables the registration to be identified without ambiguity;

(ii) if it does not indicate any ground for refusal;

(iii) if it is sent to the International Bureau after the expiry of the relevant time limit referred to in Rule 9(1);

(iv) if it is not notified to the International Bureau by the Competent Authority.

(b) Where subparagraph (a) applies, the International Bureau shall inform the Competent Authority that submitted the notification of refusal that the refusal is not considered as such by the International Bureau and has not been entered in the International Register, shall state the reasons therefore and shall, unless it is unable to identify the international registration concerned, communicate a

the refusal has not been entered in the International Register, and shall state the reasons therefor.

(2) *[Irregular Declaration]* If the declaration of refusal contains an irregularity other than those referred to in paragraph (1), the International Bureau shall nevertheless enter the refusal in the International Register and shall notify a copy of the declaration of refusal to the competent authority of the country of origin. At the request of that authority, the International Bureau shall invite the authority that notified the declaration of refusal to regularize its declaration without delay.

Rule 11

Withdrawal of a Declaration of Refusal

(1) *[Notification to the International Bureau]* Any declaration of refusal may be withdrawn, in part or in whole, at any time by the authority that notified it. The withdrawal of a declaration of refusal shall be notified to the International Bureau by the competent authority and shall be signed by such authority.

(2) *[Contents of the Notification]* The notification of withdrawal of a declaration of refusal shall indicate:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin;

(ii) the date on which the declaration of refusal was withdrawn.

(3) *[Entry in the International Register and Notification to the Competent Authority of the Country of Origin]* The International Bureau shall enter in the International Register any withdrawal referred to in paragraph (1) and shall notify a copy of the notification of withdrawal to the competent authority of the country of origin.

copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

(2) *[Irregular Declaration]* If the notification of refusal contains an irregularity other than those referred to in paragraph (1), the International Bureau shall nevertheless enter the refusal in the International Register and shall communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting party of Origin. At the request of that Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), the International Bureau shall invite the Competent Authority that submitted the notification of refusal to regularize the notification without delay.

Rule 11

Withdrawal of Refusal

(1) *[Notification to the International Bureau]* A refusal may be withdrawn, in part or in whole, at any time by the Competent Authority that notified it. The withdrawal of a refusal shall be notified to the International Bureau by the relevant Competent Authority and shall be signed by such authority.

(2) *[Contents of the Notification]* The notification of withdrawal of a refusal shall indicate:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication;

(ii) the reason for the withdrawal and, in case of a partial withdrawal, the particulars referred to in Rule 9(2)(v);

(iii) the date on which the refusal was withdrawn.

(3) *[Entry in the International Register and Notifications by the International Bureau]* The International Bureau shall enter in the International Register any withdrawal referred to in paragraph (1) and shall communicate a copy of the notification of withdrawal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

*Rule 11bis**Optional Statements of Grant of Protection*

(1) *[Statement of Grant of Protection Where No Declaration of Refusal Has Been Notified]* (a) The competent authority of a contracting country which has not notified a declaration of refusal to the International Bureau may, within the one-year period referred to in Article 5(3) of the Agreement, send to the International Bureau a statement to the effect that protection is granted to the appellation of origin that is the subject of an international registration in the contracting country concerned.

(b) The statement shall indicate:

(i) the Competent Authority of the Contracting country making the statement,

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin, and

(iii) the date of the statement.

(2) *[Statement of Grant of Protection Following a Refusal]* (a) The competent authority of a contracting country which has notified a declaration of refusal to the International Bureau may, instead of notifying a withdrawal of refusal in accordance with Rule 11(1), send to the International Bureau a statement to the effect that protection is granted to the appellation of origin that is the subject of an international registration in the contracting country concerned.

(b) The statement shall indicate:

(i) the competent authority of the contracting country making the statement,

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin, and

(iii) the date on which protection was granted.

*Rule 12**Notification of Grant of Protection*

(1) *[Optional Statement of Grant of Protection]* (a) A Competent Authority of a Contracting Party which does not refuse the effects of an international registration may, within the time limit referred to in Rule 9(1), send to the International Bureau a statement confirming that protection is granted to the appellation of origin, or the geographical indication, that is the subject of an international registration.

(b) The statement shall indicate:

(i) the Competent Authority of the Contracting Party making the statement;

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication; and

(iii) the date of the statement.

(2) *[Optional Statement of Grant of Protection Following a Refusal]* (a) Where a Competent Authority that has previously submitted a notification of refusal wishes to withdraw that refusal, it may, instead of notifying the withdrawal of refusal in accordance with Rule 11(1), send to the International Bureau a statement to the effect that protection is granted to the relevant appellation of origin or geographical indication.

(b) The statement shall indicate:

(i) the Competent Authority of the Contracting Party making the statement;

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(iii) the reason for the withdrawal and, in case of a grant of protection that amounts to a partial withdrawal of refusal, the particulars referred to in Rule 9(2)(v); and

(iv) the date on which protection was granted.

(3) *[Entry in the International Register and Notification to the Competent Authority of the Country of Origin]* The International Bureau shall enter in the International Register any statement referred to in paragraphs (1) or (2) and notify such statement to the competent authority of the country of origin.

(3) *[Entry in the International Register and Notifications by the International Bureau]* The International Bureau shall enter in the International Register any statement referred to in paragraphs (1) or (2) and communicate a copy of such statement to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

CHAPTER 5

Other Entries Concerning an International Registration

Rule 12

Period Granted to Third Parties

[See Rule 14]

(1) *[Notification to the International Bureau]*
Where the competent authority of a contracting country gives notice to the International Bureau that a period has been granted to third parties in that country to terminate the use of an appellation of origin in that country in accordance with Article 5(6) of the Agreement, such notice shall be signed by that authority and shall indicate:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin;

(ii) the identity of the third parties concerned;

(iii) the period granted to the third parties;

(iv) the date from which the time limit begins, it being understood that this date may not be later than the date on which the three-month period referred to in Article 5(6) of the Agreement expires.

(2) *[Entry in the International Register and Notification to the Competent Authority of the Country of Origin]* Subject to the notice referred to in paragraph (1) being sent by the competent authority to the International Bureau within three months from expiry of the period of one year laid down in Article 5(3) of the Agreement, the International Bureau shall enter such notice in the International Register together with the particulars shown therein and shall notify a copy of the notice to the competent authority of the country of origin.

Rule 13
Modifications

[See Rule 15]

(1) *[Permissible Modifications]* The competent authority of the country of origin may request the International Bureau to enter in the International Register:

(i) a change in the holder of the right to use the appellation of origin;

(ii) a modification to the names or addresses of the holders of the right to use the appellation of origin;

(iii) a modification to the limits of the area of production of the product to which the appellation of origin applies;

(iv) a modification relating to the legislative or administrative provisions, the judicial decisions or the registration referred to in Rule 5(2)(a)(vi);

(v) a modification relating to the country of origin that does not affect the area of production of the product to which the appellation of origin applies.

(2) *[Procedure]* A request for entry of a modification referred to in paragraph (1) shall be presented to the International Bureau by the competent authority, shall be signed by that authority and shall be accompanied by a fee the amount of which is specified in Rule 23.

(3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register a modification requested in accordance with paragraphs (1) and (2) and shall notify it to the competent authority of the other contracting countries.

Rule 14
Renunciation of Protection

[See Rule 16]

(1) *[Notification to the International Bureau]* The competent authority of the country of origin may at any time notify the International Bureau that it renounces protection in one or more contracting countries, designated by name. The notification of renunciation of protection shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin, and shall be signed by the competent authority.

(2) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register the renunciation of protection referred to in paragraph (1) and shall notify it to the competent

authority of each contracting country with respect to which the renunciation has effect.

Rule 15

[See Rule 17]

Cancellation of an International Registration

(1) *[Request for Cancellation]* The competent authority of the country of origin may at any time request the International Bureau to cancel an international registration that it has requested. A request for cancellation shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin, and shall be signed by the competent authority of the country of origin.

(2) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any cancellation together with the particulars given in the request and shall notify such cancellation to the competent authority of the other contracting countries.

Rule 16
Invalidation

Rule 13
Notification of Invalidation of the Effects of an International Registration in a Contracting Party

(1) *[Notification of Invalidation to the International Bureau]* Where the effects of an international registration are invalidated in a contracting country and the invalidation is no longer subject to appeal, the invalidation shall be notified to the International Bureau by the competent authority of that contracting country. The notification shall indicate or contain:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin;

(ii) the authority that pronounced the invalidation;

(iii) the date on which the invalidation was pronounced;

(iv) where the invalidation concerns certain elements only of the appellation of origin, the elements concerned;

(v) the grounds on the basis of which the invalidation was pronounced;

(1) *[Notification of Invalidation to the International Bureau]* Where the effects of an international registration are invalidated in a Contracting Party, in whole or in part, and the invalidation is no longer subject to appeal, the Competent Authority of the concerned Contracting Party shall transmit to the International Bureau a notification of invalidation. The notification shall indicate or contain:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(ii) the authority that pronounced the invalidation;

(iii) the date on which the invalidation was pronounced;

(iv) where the invalidation is partial, the particulars referred to in Rule 9(2)(v);

(v) the grounds on the basis of which the invalidation was pronounced;

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(vi) a copy of the decision that invalidated the effects of the international registration.

(2) *[Entry in the International Register and Notification to the Competent Authority of the Country of Origin]* The International Bureau shall enter the invalidation in the International Register together with the particulars, referred to in items (i) to (iv) of paragraph (1), which are given in the notification of invalidation, and shall notify a copy of the notification to the competent authority of the country of origin.

[See Rule 12]

(vi) a copy of the decision that invalidated the effects of the international registration.

(2) *[Entry in the International Register and Notifications by the International Bureau]* The International Bureau shall enter the invalidation in the International Register together with the particulars referred to in items (i) to (v) of paragraph (1) and shall communicate a copy of the notification to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 14

Notification of Transitional Period Granted to Third Parties

(1) *[Notification to the International Bureau]* Where a third party has been granted a defined period of time in which to terminate the use of a registered appellation of origin, or a registered geographical indication, in a Contracting Party, in accordance with Article 17(1), the Competent Authority of that Contracting Party shall notify the International Bureau accordingly. The notification shall indicate:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(ii) the identity of the third party concerned;

(iii) the period granted to the third party, preferably accompanied by information about the scope of the use during the transitional period;

(iv) the date from which the defined period begins, it being understood that the date may not be later than one year and three months from the receipt of the notification of international registration under Article 6(4) or, in the case of Article 29(4), no later than two years and three months from such receipt.

(2) *[Desirable Duration]* The duration of the period granted to a third party shall not be longer than 15 years, it being understood that the period may depend on the specific situation of each case and that a period longer than ten years would be exceptional.

(3) *[Entry in the International Register and Notifications by the International Bureau]* Subject to the notification referred to in paragraph (1) being sent by the Competent Authority to the International Bureau before the date referred to in paragraph (1)(iv), the International Bureau shall enter such notification in the International

Register together with the particulars shown therein and shall communicate a copy of the notification to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

[See Rule 13]

Rule 15
Modifications

(1) *[Permissible Modifications]* The following modifications may be recorded in the International Register:

- (i) the addition or deletion of a beneficiary or some beneficiaries;
- (ii) a modification of the names or addresses of the beneficiaries;
- (iii) a modification of the limits of the geographical area of origin of the good or goods to which the appellation of origin, or the geographical indication, applies;
- (iv) a modification relating to the legislative or administrative act, the judicial or administrative decision, or the registration referred to in Rule 5(2)(a)(vii);
- (v) a modification relating to the Contracting Party of Origin that does not affect the geographical area of origin of the good or goods to which the appellation of origin, or the geographical indication, applies;
- (vi) a modification under Rule 16.

(2) *[Procedure]* (a) A request for entry of a modification referred to in paragraph (1) shall be presented to the International Bureau by the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), and shall be accompanied by the fee specified in Rule 8.

(b) A request for entry of a modification referred to in paragraph (1) shall, where it concerns a newly established trans-border geographical area of origin, be presented to the International Bureau by the commonly designated Competent Authority.

(3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any modification requested in accordance with paragraphs (1) and (2) together with the date of receipt of the request by the International Bureau, confirm the entry to the Competent Authority that requested the modification, and

communicate such modification to the Competent Authorities of the other Contracting Parties.

(4) *[Optional Alternative]* In the case of Article 5(3), paragraphs (1) to (3) shall apply *mutatis mutandis*, it being understood that a request from the beneficiaries or from the natural person or legal entity referred to in Article 5(2)(ii) must indicate that the change is requested because of a corresponding change to the registration, the legislative or administrative act, or the judicial or administrative decision, on the basis of which the appellation of origin, or the geographical indication, had been granted protection in the Contracting Party of Origin; and that the entry of the modification in the International Register shall be confirmed to the concerned beneficiaries or natural person or legal entity by the International Bureau, which shall also inform the Competent Authority of the Contracting Party of Origin.

[See Rule 14]

Rule 16
Renunciation of Protection

(1) *[Notification to the International Bureau]* The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time notify the International Bureau that protection of the appellation of origin, or the geographical indication, is renounced, in whole or in part, in respect of one or some of the Contracting Parties. The notification of renunciation of protection shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication.

(2) *[Withdrawal of a Renunciation]* Any renunciation, including a renunciation under Rule 6(1)(d), may be withdrawn, in whole or in part, at any time by the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, subject to payment of the fee for a modification and, in the case of a renunciation under Rule 6(1)(d), the correction of the irregularity.

(3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any renunciation of protection referred to in paragraph (1), or any withdrawal of a renunciation referred to in paragraph (2), confirm the entry to the Competent Authority of the Contracting Party of Origin and, in the case of Article 5(3), the beneficiaries or the natural person or legal entity, while also informing the Competent Authority of the Contracting Party of Origin, and shall communicate the entry of such modification in the International Register to the Competent

Authorities of each Contracting Party to which the renunciation, or the withdrawal of the renunciation, relates.

(4) *[Application of Rules 9 to 12]* The Competent Authority of a Contracting Party that receives a notification of the withdrawal of a renunciation may notify the International Bureau of the refusal of the effects of the international registration in its territory. The declaration shall be addressed to the International Bureau by such Competent Authority within a period of one year from the date of receipt of the notification by the International Bureau of the withdrawal of the renunciation. Rules 9 to 12 shall apply *mutatis mutandis*.

[See Rule 15]

Rule 17

Cancellation of an International Registration

(1) *[Request for Cancellation]* The request for cancellation shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication.

(2) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any cancellation together with the particulars given in the request, confirm the entry to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), while also informing the Competent Authority of the Contracting Party of Origin, and shall communicate the cancellation to the Competent Authorities of the other Contracting Parties.

Rule 17

Corrections Made to the International Register

(1) *[Procedure]* If the International Bureau, acting *ex officio* or at the request of the competent authority of the country of origin, finds that the International Register contains an error with respect to an international registration, it shall modify the Register accordingly.

(2) *[Notification of Corrections to the Competent Authorities]* The International Bureau shall notify such fact to the competent authority of each contracting country.

Rule 18

Corrections Made to the International Register

(1) *[Procedure]* If the International Bureau, acting *ex officio* or at the request of the Competent Authority of the Contracting Party of Origin, finds that the International Register contains an error with respect to an international registration, it shall correct the Register accordingly.

(2) *[Optional Alternative]* In the case of Article 5(3), a request under paragraph (1) can also be submitted by the beneficiaries or by the natural person or legal entity referred to in Article 5(2)(ii). The beneficiaries or the natural person or legal entity shall be notified by the International Bureau of any correction concerning the international registration.

(3) *[Notification of Corrections to the Competent Authorities]* The International Bureau shall notify any correction of the International Register to the Competent Authorities of all Contracting Parties as well as, in the case

(3) *[Application of Rules 9 to 11bis]* Where the correction of the error concerns the appellation of origin or the product to which the appellation of origin applies, the competent authority of a contracting country has the right to declare that it cannot ensure the protection of the international registration so corrected. The declaration shall be addressed to the International Bureau by such competent authority within a period of one year from the date of notification by the International Bureau of the correction. Rules 9 to 11bis shall apply *mutatis mutandis*.

of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii).

(4) *[Application of Rules 9 to 12]* Where the correction of an error concerns the appellation of origin or the geographical indication, or the good or goods to which the appellation of origin or the geographical indication applies, the Competent Authority of a Contracting Party has the right to declare that it cannot ensure the protection of the appellation of origin or geographical indication after the correction. The declaration shall be addressed to the International Bureau by such Competent Authority within a period of one year from the date of notification by the International Bureau of the correction. Rules 9 to 12 shall apply *mutatis mutandis*.

Chapter 6 Miscellaneous Provisions and Fees

Rule 18 Publication

The International Bureau shall publish in the Bulletin all entries made in the International Register.

Rule 19 Extracts From the International Register and Other Information Provided by the International Bureau

(1) *[Information on the Contents of the International Register]* Extracts from the International Register or any other information on the contents of the Register shall be provided by the International Bureau to any person so requesting, on payment of a fee the amount of which is specified in Rule 23.

(2) *[Communication of Provisions, Decisions or the Registration Under Which an Appellation of Origin is Protected]* (a) Any person may request the International Bureau for a copy in the original language of the provisions, the decisions or the registration referred to in Rule 5(2)(a)(vi) on payment of a fee the amount of which is specified in Rule 23.

(b) Where such documents have already been communicated to the International Bureau, the latter shall transmit without delay a copy to the person who has made the request.

(c) If the documents have never been communicated to the International Bureau, the latter shall request a copy of them from the competent authority of the country of origin and shall transmit them, on receipt, to the person who has made the request.

Chapter IV Miscellaneous Provisions

Rule 19 Publication

The International Bureau shall publish all entries made in the International Register.

Rule 20 Extracts from the International Register and Other Information Provided by the International Bureau

(1) *[Information on the Contents of the International Register]* Extracts from the International Register or any other information on the contents of the Register shall be provided by the International Bureau to any person so requesting, on payment of the fee specified in Rule 8.

(2) *[Communication of Provisions, Decisions or the Registration Under Which an Appellation of Origin or a Geographical Indication Is Protected]* (a) Any person may request from the International Bureau a copy in the original language of the provisions, the decisions or the registration referred to in Rule 5(2)(a)(vii), on payment of the fee specified in Rule 8.

(b) Where such documents have already been communicated to the International Bureau, the latter shall transmit without delay a copy to the person who has made the request.

(c) If such a document has never been communicated to the International Bureau, the latter shall request a copy of it from the Competent Authority of the Contracting Party of Origin and shall transmit the document, on receipt, to the person who has made the request.

Rule 20
Signature

Where the signature of an authority is required under these Regulations, such signature may be printed or replaced by the affixing of a facsimile or an official seal.

Rule 21
Signature

Where the signature of a Competent Authority is required under these Regulations, such signature may be printed or replaced by the affixing of a facsimile or an official seal.

Rule 21
Date of Dispatch of Various Communications

Where the declarations referred to in Rules 9(1) and 17(3) or where the notice referred to in Rule 12(1) are communicated through a postal service, the date of dispatch shall be determined by the postmark. If the postmark is illegible or missing, the International Bureau shall treat the communication concerned as if it had been sent 20 days before the date on which it was received. Where such declarations or such notice are sent through a mail delivery service, the date of dispatch shall be determined by the information provided by such delivery service on the basis of the details of the mailing as recorded by it.

Rule 22
Date of Dispatch of Various Communications

Where the notifications referred to in Rules 9(1), 14(1), 16(4) and 18(4) are communicated through a postal service, the date of dispatch shall be determined by the postmark. If the postmark is illegible or missing, the International Bureau shall treat the communication concerned as if it had been sent 20 days before the date on which it was received. Where such notifications are sent through a mail delivery service, the date of dispatch shall be determined by the information provided by such delivery service on the basis of the details of the mailing as recorded by it. Such notifications may also be communicated by facsimile or by electronic means, as provided for in the Administrative Instructions.

Rule 22
Modes of Notification by the International Bureau

(1) *[Notification of the International Registration]* The notification of the international registration, referred to in Rule 7(1), shall be addressed by the International Bureau to the competent authority of each contracting country by registered mail with acknowledgement of receipt or by any other means enabling the International Bureau to establish the date on which notification was received, as provided for in the Administrative Instructions.

(2) *[Other Notifications]* Any other notification by the International Bureau referred to in these Regulations shall be addressed to the competent authorities by registered post or by any other means enabling the International Bureau to establish that the notification has been received.

Rule 23
Modes of Notification by the International Bureau

(1) *[Notification of the International Registration]* The notification of the international registration, referred to in Rule 7(3)(ii), or the notification of the withdrawal of a renunciation referred to in Rule 16(3), shall be addressed by the International Bureau to the Competent Authority of each Contracting Party concerned by any means enabling the International Bureau to establish the date on which the notification was received, as provided for in the Administrative Instructions.

(2) *[Other Notifications]* Any other notification by the International Bureau referred to in these Regulations shall be addressed to the Competent Authorities by any means enabling the International Bureau to establish that the notification has been received.

Rule 23
Fees

[See Rule 8]

The International Bureau shall collect the following fees, payable in Swiss francs:

	Amount (Swiss francs)
(i) fee for registration of an appellation of origin	1000
(ii) fee for entry of a modification of a registration	500

COMPARISON OF THE TEXTS OF THE LISBON AGREEMENT AND THE GENEVA ACT

(iii) fee for providing an extract
from the International Register 150

(iv) fee for providing an attestation
or any other information given in writing
concerning the contents of the International
Register 100

*Rule 23bis
Administrative Instructions*

(1) *[Establishment of Administrative Instructions; Matters Governed by Them]* (a) The Director General shall establish Administrative Instructions. The Director General may modify them. Before establishing or modifying the Administrative Instructions, the Director General shall consult the competent authorities of the contracting countries which have direct interest in the proposed Administrative Instructions or their proposed modification.

(b) The Administrative Instructions shall deal with matters in respect of which these Regulations expressly refer to such Instructions and with details in respect of the application of these Regulations.

(2) *[Control by the Assembly]* The Assembly may invite the Director General to modify any provision of the Administrative Instructions, and the Director General shall proceed accordingly.

(3) *[Publication and Effective Date]* (a) The Administrative Instructions and any modification thereof shall be published in the Bulletin.

(b) Each publication shall specify the date on which the published provisions become effective. The dates may be different for different provisions, provided that no provision may be declared effective prior to its publication in the Bulletin.

(4) *[Conflict with the Agreement or These Regulations]* In the case of conflict between, on the one hand, any provision of the Administrative Instructions and, on the other hand, any provision of the Agreement or these Regulations, the latter shall prevail.

*Rule 24
Entry into Force*

These Regulations shall enter into force on April 1, 2002³, and shall, as from that date, replace the previous Regulations.

³ Since then, these Regulations were amended twice by the Assembly of the Lisbon Union. First, with the amendments adopted during its twenty-fifth (18th ordinary) session, held in Geneva from September 22 to October 1, 2009, the Assembly

*Rule 24
Administrative Instructions*

(1) *[Establishment of Administrative Instructions; Matters Governed by Them]* (a) The Director General shall establish Administrative Instructions and may modify them. Before establishing or modifying the Administrative Instructions, the Director General shall consult the Competent Authorities of the Contracting Parties which have direct interest in the proposed Administrative Instructions or their proposed modification.

(b) The Administrative Instructions shall deal with matters in respect of which these Regulations expressly refer to such Instructions and with details in respect of the application of these Regulations.

(2) *[Supervision by the Assembly]* The Assembly may invite the Director General to modify any provision of the Administrative Instructions and the Director General shall act upon any such invitation.

(3) *[Publication and Effective Date]* (a) The Administrative Instructions and any modification thereof shall be published.

(b) Each publication shall specify the date on which the published provisions become effective.

(4) *[Conflict with the Act or These Regulations]* In the case of conflict between, on the one hand, any provision of the Administrative Instructions and, on the other hand, any provision of the Act or these Regulations, the latter shall prevail.

introduced two new provisions, i.e., Rules 11bis and 23bis, together with consequential changes in Rules 1, 4, 8, 17 and 22, with effect from January 1, 2010. Second, during its twenty-seventh (19th ordinary) session, held in Geneva from September 26 to October 5, 2011, the Assembly adopted two further amendments, adding, with effect from January 1, 2012, new item (vi) to Rule 5(3) and new item (v) to Rule 16(1) while maintaining the existing item (v) of that Rule as item (vi).

Signatories of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (15)

Bosnia and Herzegovina	May 21, 2015
Burkina Faso	May 21, 2015
Congo	May 21, 2015
Costa Rica	October 13, 2015
France	May 21, 2015
Gabon	May 21, 2015
Hungary	May 21, 2015
Italy	May 22, 2015
Mali	May 21, 2015
Nicaragua	May 21, 2015
Peru	May 21, 2015
Portugal	August 5, 2015
Republic of Moldova	April 11, 2016
Romania	May 21, 2015
Togo	May 21, 2015

Final Act of the Diplomatic Conference

In accordance with the decision by the Lisbon Union Assembly taken at its twenty-ninth (20th ordinary) session in September 2013 to convene a Diplomatic Conference in 2015, and following the preparations carried out by the Preparatory Committee of the said Conference and the World Intellectual Property Organization (WIPO), the Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was convened by WIPO and held in Geneva from May 11 to 21, 2015.

The Diplomatic Conference adopted, on May 20, 2015, the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. The said Act was opened for signature on May 21, 2015.

IN WITNESS THEREOF, the undersigned, being duly authorized thereto, have signed the present Final Act in Geneva, on May 21, 2015:

Algeria, Angola, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cameroon, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Democratic People's Republic of Korea, Denmark, Finland, France, Gabon, Georgia, Germany, Greece, Haiti, Hungary, Iran (Islamic Republic of), Israel, Italy, Latvia, Lithuania, Luxembourg, Mali, Mexico, Montenegro, Morocco, Mozambique, Netherlands, Nicaragua, Oman, Peru, Portugal, Republic of Moldova, Romania, Russian Federation, Senegal, Serbia, Slovakia, Spain, Switzerland, Togo, Tunisia, African Intellectual Property Organization (OAPI), European Union (54).

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LI/DC/INF/4	TENTATIVE TIMETABLE prepared by the Secretariat

Text of the Conference Documents of the “LI/DC” Series

LI/DC/1 PROV.2

May 8, 2015 (Original: English)

REVISED DRAFT AGENDA

prepared by the Secretariat

1. Opening of the Conference by the Director General of WIPO
2. Consideration and adoption of the Rules of Procedure
3. Election of the President of the Conference
4. Consideration and adoption of the agenda
5. Election of the Vice-Presidents of the Conference
6. Election of the members of the Credentials Committee
7. Election of the members of the Drafting Committee
8. Election of the Officers of the Credentials Committee, the Main Committees and Drafting Committee
9. Admission of Observers
10. Opening declarations by Delegations and by representatives of Observers
11. Consideration of the first report of the Credentials Committee
12. Consideration of the texts proposed by the Main Committees
13. Consideration of the second report of the Credentials Committee
14. Adoption of the Treaty and the Regulations
15. Adoption of any recommendation, resolution, agreed statement or final act
16. Closing declarations by Delegations and by representatives of Observers
17. Closing of the Conference by the President¹

¹ Immediately after the closing of the Conference, the final Act, if any, and the instrument will be open for signature.

LI/DC/2

May 11, 2015 (Original: English)

RULES OF PROCEDURE

*as adopted on May 11, 2015, by the Diplomatic Conference*Contents

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CHAPTER I: OBJECTIVE, COMPETENCE, COMPOSITION AND
SECRETARIAT OF THE CONFERENCERule 1: Objective and Competence of the Conference

- (1) The objective of the Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration (hereinafter referred to as "the Conference") is to negotiate and adopt such a New Act and Regulations under that New Act (hereinafter referred to, respectively, as "the New Act" and "the Regulations").
- (2) The Conference, meeting in Plenary, shall be competent to:
- (i) adopt the Rules of Procedure of the Conference (hereinafter referred to as "these Rules") and to make any amendments thereto;
 - (ii) adopt the agenda of the Conference;
 - (iii) decide on credentials, full powers, letters or other documents presented in accordance with Rules 6, 7 and 8 of these Rules;
 - (iv) adopt the New Act and the Regulations;
 - (v) adopt any recommendation, resolution or agreed statement within the terms of the objective in paragraph (1);
 - (vi) adopt any final act of the Conference;
 - (vii) deal with all other matters referred to it by these Rules or appearing on its agenda.

Rule 2: Composition of the Conference

- (1) The Conference shall consist of:
- (i) delegations of the States members of the Lisbon Union (hereinafter referred to as "the Member Delegations"),
 - (ii) the delegations of the African Intellectual Property Organization and the European Union (hereinafter referred to as "the Special Delegations"),
 - (iii) the delegations of States members of the World Intellectual Property Organization which are not members of the Lisbon Union and the delegations of States members of the United Nations which are not members of the World Intellectual Property Organization (hereinafter referred to as "the Observer Delegations"), and
 - (iv) representatives of intergovernmental and non-governmental organizations and others invited to the Conference as observers (hereinafter referred to as "the Observers").

(2) References in these Rules of Procedure to "Member Delegations" shall be considered, except as otherwise provided (see Rules 11(2), 33 and 34), as references also to the Special Delegations.

(3) References in these Rules of Procedure to "Delegations" shall be considered as references to the three kinds (Member, Special and Observer) of Delegations but not to Observers.

Rule 3: Secretariat of the Conference

(1) The Conference shall have a Secretariat provided by the International Bureau of the World Intellectual Property Organization (hereinafter referred to as "the International Bureau" and "WIPO", respectively).

(2) The Director General of WIPO and any official of the International Bureau designated by the Director General of WIPO may participate in the discussions of the Conference, meeting in Plenary, as well as in any committee or working group thereof and may, at any time, make oral or written statements, observations or suggestions to the Conference, meeting in Plenary, and any committee or working group thereof concerning any question under consideration.

(3) The Director General of WIPO shall, from among the staff of the International Bureau, designate the Secretary of the Conference and a Secretary for each committee and for each working group.

(4) The Secretary of the Conference shall direct the staff required by the Conference.

(5) The Secretariat shall provide for the receiving, translation, reproduction and distribution of the required documents, for the interpretation of oral interventions and for the performance of all other secretariat work required for the Conference.

(6) The Director General of WIPO shall be responsible for the custody and preservation in the archives of WIPO of all documents of the Conference. The International Bureau shall distribute the final documents of the Conference after the closing of the Conference.

CHAPTER II: REPRESENTATION

Rule 4: Delegations

(1) Each Delegation shall consist of one or more delegates and may include advisors.

(2) Each Delegation shall have a Head of Delegation and may have a Deputy Head of Delegation.

Rule 5: Observers

An Observer may be represented by one or more representatives.

Rule 6: Credentials and Full Powers

(1) Each Delegation shall present credentials. If a final act of the Conference (see Rule 1(2)(vi)) is adopted, it shall be open for signature by any Delegation whose credentials have been found in order under Rule 9(2).

(2) Full powers shall be required for signing the New Act. Such powers may be included in the credentials.

Rule 7: Letters of Appointment

The representatives of Observers shall present a letter or other document appointing them.

Rule 8: Presentation of Credentials, etc.

The credentials and full powers referred to in Rule 6 and the letters or other documents referred to in Rule 7 shall be presented to the Secretary of the Conference, preferably not later than twenty-four hours after the opening of the Conference.

Rule 9: Examination of Credentials, etc.

(1) The Credentials Committee referred to in Rule 11 shall examine the credentials, full powers, letters or other documents referred to in Rules 6 and 7, respectively, and shall report to the Conference, meeting in Plenary.

(2) The decision on whether a credential, full powers, letter or other document is in order shall be made by the Conference, meeting in Plenary. Such decision shall be made as soon as possible and in any case before the adoption of the New Act.

Rule 10: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, Delegations and Observers shall be entitled to participate provisionally in the deliberations of the Conference as provided in these Rules.

CHAPTER III: COMMITTEES AND WORKING GROUPS

Rule 11: Credentials Committee

- (1) The Conference shall have a Credentials Committee.
- (2) The Credentials Committee shall consist of seven Member Delegations elected by the Conference, meeting in Plenary, from among the Member Delegations, except that the Special Delegations shall not be eligible for membership in the Credentials Committee.

Rule 12: Main Committees and Their Working Groups

- (1) The Conference shall have two Main Committees. Main Committee I shall be responsible for proposing for adoption by the Conference, meeting in Plenary, the substantive provisions of the New Act, the Regulations and any recommendation, resolution or agreed statement referred to in Rule 1(2)(v). Main Committee II shall be responsible for proposing for adoption by the Conference, meeting in Plenary, the other provisions of the New Act.
- (2) Each Main Committee shall consist of all the Member Delegations.
- (3) Each Main Committee may create working groups. In creating a working group, the Main Committee creating it shall specify the tasks of the Working Group, decide on the number of the members of the Working Group and elect such members from among the Member Delegations.

Rule 13: Drafting Committee

- (1) The Conference shall have a Drafting Committee.
- (2) The Drafting Committee shall consist of 12 elected members and two *ex officio* members. The elected members shall be elected by the Conference, meeting in Plenary, from among the Member Delegations. The Presidents of the two Main Committees shall be the *ex officio* members.
- (3) The Drafting Committee shall prepare drafts and give advice on drafting as requested by either Main Committee. The Drafting Committee shall not alter the substance of the texts submitted to it. It shall coordinate and review the drafting of all texts submitted to it by the Main Committees, and it shall submit the texts so reviewed for final approval to the competent Main Committee.

Rule 14: Steering Committee

- (1) The Conference shall have a Steering Committee.
- (2) The Steering Committee shall consist of the President and Vice-Presidents of the Conference, the President of the Credentials Committee, the Presidents of the Main Committees

and the President of the Drafting Committee. The meetings of the Steering Committee shall be presided over by the President of the Conference.

(3) The Steering Committee shall meet from time to time to review the progress of the Conference and to make decisions for furthering such progress, including, in particular, decisions on the coordinating of the meetings of the Plenary, the committees and the working groups.

(4) The Steering Committee shall propose the text of any final act of the Conference (see Rule 1(2)(vi)), for adoption by the Conference, meeting in Plenary.

CHAPTER IV: OFFICERS

Rule 15: Officers and Their Election; Precedence Among Vice-Presidents

(1) The Conference shall have a President and seven Vice-Presidents.

(2) The Credentials Committee, each of the two Main Committees and the Drafting Committee shall have a President and two Vice-Presidents.

(3) Any Working Group shall have a President and two Vice-Presidents.

(4) The Conference, meeting in Plenary, and presided over by the Director General of WIPO, shall elect its President, and, then, presided over by its President shall elect its Vice-Presidents and the officers of the Credentials Committee, the Main Committees and the Drafting Committee.

(5) The officers of a Working Group shall be elected by the Main Committee that establishes that Working Group.

(6) Precedence among the Vice-Presidents of a given body (the Conference, the Credentials Committee, the two Main Committees, any Working Group, the Drafting Committee) shall be determined by the place occupied by the name of the State of each of them in the list of Member Delegations established in the alphabetical order of the names of the States in French, beginning with the Member Delegation whose name shall have been drawn by lot by the President of the Conference. The Vice-President of a given body who has precedence over all the other Vice-Presidents of that body shall be called "the ranking" Vice-President of that body.

Rule 16: Acting President

(1) If the President is absent from a meeting, the meeting shall be presided over, as Acting President, by the ranking Vice-President of that body.

(2) If all the officers of a body are absent from any meeting of the body concerned, that body shall elect an Acting President.

Rule 17: Replacement of the President

If the President becomes unable to perform his or her functions for the remainder of the duration of the Conference, a new President shall be elected.

Rule 18: Vote by the Presiding Officer

(1) No President, whether elected as such or acting (hereinafter referred to as "the Presiding Officer"), shall take part in voting. Another member of his or her Delegation may vote for that Delegation.

(2) Where the Presiding Officer is the only member of his or her Delegation, he or she may vote, but only in the last place.

CHAPTER V: CONDUCT OF BUSINESS**Rule 19: Quorum**

(1) A quorum shall be required in the Conference, meeting in Plenary; it shall, subject to paragraph (3), be constituted by one-half of the Member Delegations represented at the Conference.

(2) A quorum shall be required for the meetings of each Committee (the Credentials Committee, the two Main Committees, the Drafting Committee and the Steering Committee) and any working group; it shall be constituted by one-half of the members of the Committee or working group.

(3) The quorum at the time of the adoption of the New Act by the Conference, meeting in Plenary, shall be constituted by one half of the Member Delegations whose credentials were found in order by the Conference meeting in Plenary.

Rule 20: General Powers of the Presiding Officer

(1) In addition to exercising the powers conferred upon Presiding Officers elsewhere by these Rules, the Presiding Officer shall declare the opening and closing of the meetings, direct the discussions, accord the right to speak, put questions to the vote, and announce decisions. The Presiding Officer shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat.

(2) The Presiding Officer may propose to the body over which he or she presides the limitation of time to be allowed to each speaker, the limitation of the number of times each Delegation may speak on any question, the closure of the list of speakers or the closure of the debate. The Presiding Officer may also propose the suspension or the adjournment of the meeting, or the adjournment of the debate on the question under discussion. Such proposals of the Presiding Officer shall be considered as adopted unless immediately rejected.

Rule 21: Speeches

- (1) No person may speak without having previously obtained the permission of the Presiding Officer. Subject to Rules 22 and 23, the Presiding Officer shall call upon persons in the order in which they ask for the floor.
- (2) The Presiding Officer may call a speaker to order if the remarks of the speaker are not relevant to the subject under discussion.

Rule 22: Precedence in Receiving the Floor

- (1) Member Delegations asking for the floor are generally given precedence over Observer Delegations asking for the floor, and Member Delegations and Observer Delegations are generally given precedence over Observers.
- (2) The President of a Committee or working group may be given precedence during discussions relating to the work of the Committee or working group concerned.
- (3) The Director General of WIPO or his representative may be given precedence for making statements, observations or suggestions.

Rule 23: Points of Order

- (1) During the discussion of any matter, any Member Delegation may rise to a point of order, and the point of order shall be immediately decided by the Presiding Officer in accordance with these Rules. Any Member Delegation may appeal against the ruling of the Presiding Officer. The appeal shall be immediately put to the vote, and the Presiding Officer's ruling shall stand unless the appeal is approved.
- (2) The Member Delegation that has risen to a point of order under paragraph (1) may not speak on the substance of the matter under discussion.

Rule 24: Limit on Speeches

In any meeting, the Presiding Officer may decide to limit the time allowed to each speaker and the number of times each Delegation and Observer may speak on any question. When the debate is limited and a Delegation or Observer has used up its allotted time, the Presiding Officer shall call it to order without delay.

Rule 25: Closing of List of Speakers

- (1) During the discussion of any given question, the Presiding Officer may announce the list of participants who have asked for the floor and decide to close the list as to that question. The Presiding Officer may nevertheless accord the right of reply to any speaker if a speech, delivered after the list of speakers has been closed, makes it desirable.
- (2) Any decision made by the Presiding Officer under paragraph (1) may be the subject of an appeal under Rule 23.

Rule 26: Adjournment or Closure of Debate

Any Member Delegation may at any time move the adjournment or closure of the debate on the question under discussion, whether or not any other participant has asked for the floor. In addition to the proposer of the motion to adjourn or close the debate, permission to speak on that motion shall be given only to one Member Delegation seconding and two Member Delegations opposing it, after which the motion shall immediately be put to the vote. The Presiding Officer may limit the time allowed to speakers under this Rule.

Rule 27: Suspension or Adjournment of the Meeting

During the discussion of any matter, any Member Delegation may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote.

Rule 28: Order of Procedural Motions; Content of Interventions on Such Motions

(1) Subject to Rule 23, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (i) to suspend the meeting,
- (ii) to adjourn the meeting,
- (iii) to adjourn the debate on the question under discussion,
- (iv) to close the debate on the question under discussion.

(2) Any Member Delegation that has been given the floor on a procedural motion may speak on that motion only, and may not speak on the substance of the matter under discussion.

Rule 29: Basic Proposal; Proposals for Amendment

- (1) (a) Documents LI/DC/3 and 4 shall constitute the basis of the discussions in the Conference, and the text of the draft New Act and the draft Regulations contained in those documents shall constitute the "Basic Proposal."

(b) Where, for any given provision of the draft New Act or the draft Regulations there are two or more alternatives in the Basic Proposal, consisting of either two or more texts, or one or more texts and an alternative that there should be no such provision, the alternatives shall be designated with the letters A, B, etc., and shall have equal status. Discussions shall take place simultaneously on the alternatives and, if voting is necessary and there is no consensus on which alternative should be put to the vote first, each Member Delegation shall be invited to indicate its preference among the two or more alternatives. The alternative supported by more Member Delegations than the other one or more alternatives shall be put to the vote first.

(c) Wherever the Basic Proposal contains words within square brackets, only the text that is not within square brackets shall be regarded as part of the Basic Proposal, whereas words within square brackets shall be treated as a proposal for amendment if presented as provided in paragraph (2).

(2) Any Member Delegation may propose amendments to the Basic Proposal.

(3) Proposals for amendment shall, as a rule, be submitted in writing and handed to the Secretary of the body concerned. The Secretariat shall distribute copies to the Delegations and the Observers. As a general rule, a proposal for amendment cannot be taken into consideration and discussed or put to the vote at a meeting unless copies of it have been distributed not later than three hours before it is taken into consideration. The Presiding Officer may, however, permit the taking into consideration and discussion of a proposal for amendment even though copies of it have not been distributed or have been distributed less than three hours before it is taken into consideration.

Rule 30: Decisions on the Competence of the Conference

(1) If a Member Delegation moves that a duly seconded proposal should not be taken into consideration by the Conference because it is outside the latter's competence, that motion shall be decided upon by the Conference, meeting in Plenary, before the proposal is taken into consideration.

(2) If the motion referred to in paragraph (1), above, is made in a body other than the Conference, meeting in Plenary, it shall be referred to the Conference, meeting in Plenary, for a ruling.

Rule 31: Withdrawal of Procedural Motions and Proposals for Amendment

Any procedural motion and any proposal for amendment may be withdrawn by the Member Delegation that has made it, at any time before voting on it has commenced, provided that no amendment to it has been proposed by another Member Delegation. Any motion or proposal thus withdrawn may be reintroduced by any other Member Delegation.

Rule 32: Reconsideration of Matters Decided

When any matter has been decided by a body, it may not be reconsidered by that body unless so decided by the majority applicable under Rule 34(2)(ii). In addition to the proposer of the motion to reconsider, permission to speak on that motion shall be given only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the motion shall immediately be put to the vote.

CHAPTER VI: VOTING

Rule 33: Right to Vote

(1) Each Member Delegation shall have the right to vote. A Member Delegation shall have one vote, may represent itself only and may vote in its name only.

(2) Subject to paragraph (3), the Special Delegations have no right to vote and, for the purposes of paragraph (1) of this Rule and Rule 34, the Special Delegations are not covered by the term "Member Delegations."

(3) A Special Delegation may, under the authority of the intergovernmental organization it represents, exercise the rights to vote of the Member States of the intergovernmental organization which are represented at the Diplomatic Conference, provided that

(i) the Special Delegation shall not exercise the rights to vote of the Member States of the intergovernmental organization it represents if the Member States exercise their rights to vote and vice versa, and

(ii) the number of votes cast by a Special Delegation shall in no case exceed the number of Member States of the intergovernmental organization it represents that are represented at the Diplomatic Conference and that are present at and entitled to participate in the vote.

Rule 34: Required Majorities

(1) All decisions of all bodies shall be made as far as possible by consensus.

(2) If it is not possible to attain consensus, the following decisions shall require a majority of two-thirds of the Member Delegations present and voting:

(i) adoption by the Conference, meeting in Plenary, of these Rules, and, once adopted, any amendment to them,

(ii) decision by any of the bodies to reconsider, under Rule 32, a matter decided,

(iii) adoption by the Conference, meeting in Plenary, of the New Act and the Regulations,

whereas all other decisions of all bodies shall require a simple majority of the Member Delegations present and voting.

(3) "Voting" means casting an affirmative or negative vote; express abstention or non-voting shall not be counted.

Rule 35: Requirement of Seconding; Method of Voting

(1) Any proposal for amendment made by a Member Delegation shall be put to a vote only if seconded by at least one other Member Delegation.

(2) Voting on any question shall be by show of hands unless a Member Delegation, seconded by at least one other Member Delegation, requests a roll-call, in which case it shall be by roll-call. The roll shall be called in the alphabetical order of the names in French of the States, beginning with the Member Delegation whose name shall have been drawn by lot by the Presiding Officer.

Rule 36: Conduct During Voting

(1) After the Presiding Officer has announced the beginning of voting, the voting shall not be interrupted except on a point of order concerning the actual conduct of the voting.

(2) The Presiding Officer may permit a Member Delegation to explain its vote or its abstention, either before or after the voting.

Rule 37: Division of Proposals

Any Member Delegation may move that parts of the Basic Proposal or of any proposal for amendment be voted upon separately. If the request for division is objected to, the motion for division shall be put to a vote. In addition to the proposer of the motion for division, permission to speak on that motion shall be given only to one Member Delegation seconding and two Member Delegations opposing it. If the motion for division is carried, all parts of the Basic Proposal or of the proposal for amendment that have been separately approved shall again be put to the vote, together, as a whole. If all operative parts of the Basic Proposal or of the proposal for amendment have been rejected, the Basic Proposal or the proposal for amendment shall be considered rejected as a whole.

Rule 38: Voting on Proposals for Amendment

(1) Any proposal for amendment shall be voted upon before the text to which it relates is voted upon.

(2) Proposals for amendment relating to the same text shall be put to the vote in the order of their substantive remoteness from the said text, the most remote being put to the vote first and the least remote being put to the vote last. If, however, the adoption of any proposal for amendment necessarily implies the rejection of any other proposal for amendment or of the original text, such other proposal or text shall not be put to the vote.

(3) If one or more proposals for amendment relating to the same text are adopted, the text as amended shall be put to the vote.

(4) Any proposal the purpose of which is to add to or delete from a text shall be considered a proposal for amendment.

Rule 39: Voting on Proposals for Amendment on the Same Question

Subject to Rule 38, where two or more proposals relate to the same question, they shall be put to the vote in the order in which they have been submitted, unless the body concerned decides on a different order.

Rule 40: Equally Divided Votes

(1) Subject to paragraph (2), if a vote is equally divided on a matter that calls only for a simple majority, the proposal shall be considered rejected.

(2) If a vote is equally divided on a proposal for electing a given person to a given position as officer and the nomination is maintained, the vote shall be repeated, until either that nomination is adopted or rejected or another person is elected for the position in question.

CHAPTER VII: LANGUAGES AND MINUTES

Rule 41: Languages of Oral Interventions

(1) Subject to paragraph (2), oral interventions made in the meetings of any of the bodies shall be in Arabic, Chinese, English, French, Portuguese, Russian or Spanish, and interpretation shall be provided by the Secretariat into Arabic, Chinese, English, French, Russian and Spanish.

(2) Any of the Committees and any working group may, if none of its members objects, decide to dispense with interpretation or to limit interpretation to some only of the languages that are referred to in paragraph (1).

Rule 42: Summary Minutes

(1) Provisional summary minutes of the meetings of the Conference, meeting in Plenary, and of the Main Committees shall be drawn up by the International Bureau and shall be made available as soon as possible after the closing of the Conference to all speakers, who shall, within two months after the minutes have been made available, inform the International Bureau of any suggestions for changes in the minutes of their own interventions.

(2) The final summary minutes shall be published in due course by the International Bureau.

Rule 43: Languages of Documents and Summary Minutes

- (1) Any written proposal shall be presented to the Secretariat in Arabic, Chinese, English, French, Russian or Spanish. Such proposal shall be distributed by the Secretariat in Arabic, Chinese, English, French, Russian and Spanish.
- (2) Reports of the Committees and any working group shall be distributed in Arabic, Chinese, English, French, Russian and Spanish. Information documents of the Secretariat shall be distributed in English and French and, whenever practicable, also in Arabic, Chinese, Russian and Spanish.
- (3)
 - (a) Provisional summary minutes shall be drawn up in the language used by the speaker if the speaker has used English, French or Spanish; if the speaker has used another language, the intervention shall be rendered in English or French at the choice of the International Bureau.
 - (b) The final summary minutes shall be made available in English, French and Spanish and, whenever practicable, also in Arabic, Chinese, and Russian.

CHAPTER VIII: OPEN AND CLOSED MEETINGS**Rule 44: Meetings of the Conference and of the Main Committees**

The meetings of the Conference, meeting in Plenary, and of the Main Committees shall be open to the public unless the Conference, meeting in Plenary, or the interested Main Committee, decides otherwise.

Rule 45: Meetings of Other Committees and of Working Groups

The meetings of the Credentials Committee, the Drafting Committee, the Steering Committee and any working group shall be open only to the members of the Committee or the working group concerned and to the Secretariat.

CHAPTER IX: OBSERVER DELEGATIONS AND OBSERVERS**Rule 46: Status of Observers**

- (1) Observer Delegations may attend and make oral statements in the Plenary meetings of the Conference and the meetings of the Main Committees.

- (2) Observers may attend the Plenary meetings of the Conference and the meetings of the Main Committees. Upon the invitation of the Presiding Officer, they may make oral statements in those meetings on questions within the scope of their activities.
- (3) Written statements submitted by Observer Delegations or by Observers on subjects for which they have a special competence and which are related to the work of the Conference shall be distributed by the Secretariat to the participants in the quantities and in the languages in which the written statements were made available to it.

CHAPTER X: AMENDMENTS TO THE RULES OF PROCEDURE

Rule 47: Possibility of Amending the Rules of Procedure

With the exception of the present Rule, these Rules may be amended by the Conference, meeting in Plenary.

CHAPTER XI: FINAL ACT

Rule 48: Signing of the Final Act

If a final act is adopted, it shall be open for signature by any Delegation.

LI/DC/3

November 14, 2014 (Original: English)

BASIC PROPOSAL FOR THE NEW ACT OF THE LISBON AGREEMENT ON
APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS

*Submitted, under Rule 29(1)(a) of the Draft Rules of Procedure,
by the Director General of WIPO*

Editor's Note: Document LI/DC/3 contains the Basic Proposal for the New Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. It is reproduced on pages 9 to 49 of these Records.

LI/DC/4

November 14, 2014 (Original: English)

BASIC PROPOSAL FOR THE REGULATIONS UNDER
THE REVISED TRADEMARK LAW TREATY

*submitted, under Rule 29(1)(a) of the Draft Rules of Procedure,
by the Director General of WIPO*

Editor's Note: Document LI/DC/4 contains the Basic Proposal for the Regulations Under the Revised Trademark Law Treaty. It is reproduced on pages 51 to 92 of these Records.

LI/DC/5

December 22, 2014 (Original: English)

NOTES ON THE BASIC PROPOSAL FOR THE NEW ACT OF THE LISBON AGREEMENT
ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS*prepared by the Secretariat*

INTRODUCTION

1. The present document contains the Explanatory Notes on the Basic Proposal for the New Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, as contained in document LI/DC/3 ("the Basic Proposal").

2. The Explanatory Notes contained in this document are proposed by the Secretariat. They are based on the Notes contained in document LI/WG/DEV/10/4, which were considered by the Working Group on the Development of the Lisbon System ("the Working Group") at its tenth session, in October 2014, in connection with its consideration of the draft of the New Act, as contained in document LI/WG/DEV/10/2. The Explanatory Notes are not part of the Basic Proposal and they are not intended to be adopted by the Diplomatic Conference. Therefore, where a conflict exists between the notes and other provisions of the Basic Proposal, the latter shall prevail. Where a provision appears not to require explanation, no note has been provided.

1. As indicated in paragraph 11 of the Report of the Preparatory Committee of the Diplomatic Conference (document LI/R/PM/6), it was agreed to set a deadline of February 1, 2015, for all WIPO Member States to submit their proposals in writing for amendments to the Basic Proposal on issues that were identified as pending by the Working Group. The Secretariat would compile the said submissions and forward them to the Diplomatic Conference for information.

2. As indicated in paragraph 13 of the Summary by the Chair, as adopted by the Working Group at its tenth session (document LI/WG/DEV/10/6), the following issues were identified by the Working Group as still pending²:

- (i) implementation aspects of Article 1(xiv);
- (ii) the content of Article 2(2) and Article 5(4) concerning trans-border geographical areas of origin;
- (iii) the entitlement to file an application under Article 5(2);
- (iv) Article 7(3), Article 8(3), Article 24(3)(vi) and related provisions concerning the possible introduction of maintenance fees;
- (v) the possible re-introduction of the provisions of the current Lisbon Agreement dealing with contributions by members of the Lisbon Union;

² The references to the provisions are those contained in the Basic Proposal.

- (vi) Article 7(5) and related provisions concerning the possible introduction of individual fees;
- (vii) the various options in respect of Article 11(1)(a) and Article 11(3);
- (viii) the Draft Agreed Statement contained in footnote 1 to Article 11 and provisions relating to the same issue;
- (ix) the content of Article 12 concerning protection against becoming generic;
- (x) the content of Article 13(1) concerning safeguards in respect of prior trademark rights;
- (xi) the content of Article 16(2) concerning negotiations following a refusal;
- (xii) the content of Article 17 concerning the necessity of a phasing out period;
- (xiii) whether Article 19(1) should establish an exhaustive or a non-exhaustive list of grounds for invalidation;
- (xiv) whether Rule 5(3) should be optional or mandatory;
- (xv) the inclusion of Rule 5(4) permitting a Contracting Party to require a declaration of intention to use in respect of a registered appellation of origin or a registered geographical indication;
- (xvi) promoting transparency under Rule 5(5); and
- (xvii) the amount of fees in Rule 8(1).

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NOTES ON ARTICLE 1: ABBREVIATED EXPRESSIONS

1.01 Following the example of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (hereinafter referred to as “the Geneva Act”), Article 1 explains a certain number of abbreviated expressions and defines several terms used throughout the draft New Act of the Lisbon Agreement (“New Act”). While several abbreviated expressions and definitions contained in Article 1 are similar to those contained in the Regulations under the Lisbon Agreement, others have been added whenever it appeared necessary as in the case of the provisions below.

1.02 Items (vi) and (vii) were added to the list of abbreviated expressions in Article 1 as a result of the discussions at the ninth session of the Working Group. Thus, the terms “appellation of origin” and “geographical indication” can be used throughout the New Act without prejudice to the way in which the national or regional legislation of a Contracting Party addresses the subject-matter that is defined in Article 2. The New Act will not oblige Contracting Parties to use the same terminology, nor require them to define the subject-matter in the same way as stipulated in the New Act. A similar approach was taken at the Diplomatic Conference that adopted the Lisbon Agreement in 1958. Reference is made in this regard to the Records of the Lisbon Conference, p. 859 (in an unofficial translation from the official French text): “By introducing a definition for appellations of origin into the Agreement itself, such definition could be invoked for the purposes of registration, without prejudicing a national definition, whether broader or more precise in scope.” In the same vein, Contracting Parties will not be required to distinguish in their national or regional law as between appellations of origin and geographical indications. However, Contracting Parties that do not make such a distinction – but provide protection under Chapter III on the basis of a broader definition corresponding to the definition of a geographical indication under Article 2 – will be obliged to provide such protection not only in respect of geographical indications, but also in respect of appellations of origin registered under the New Act.

1.03 Item (xii) concerns the geographical area where the good or goods designated by the appellation of origin or identified by the geographical indication should originate, in accordance with Article 2.

1.04 Item (xiii): in respect of a good from a geographical area of origin situated in, or covering, more than one Contracting Party, reference is made to Article 2(2), second sentence.

1.05 Item (xiv) defines the term “Contracting Party”, which is used instead of the term “countries” in the Lisbon Agreement and the 1967 Act, as the New Act is aimed to be open for accession by States as well as intergovernmental organizations. As regards the pending issue referred to in paragraph 4, item (i), of the present document, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 18 to 21).

1.06 Item (xv) defines the term “Contracting Party of Origin”. The notion of “Contracting Party of Origin” is used to determine who is eligible to register a given appellation of origin or geographical indication. The determining factors in this respect are: (1) the geographical area of origin of the good; and (2) the legislation under which the appellation of origin or geographical indication is protected in the territory of the Contracting Party where the geographical area of origin is situated – see Article 2(1) –, which is also important for determining which Contracting

Party should be regarded as the Contracting Party of Origin in the case of a Contracting Party that is a member State of an intergovernmental organization.

1.07 Item (xvi): the term “Competent Authority” also applies to the authority jointly designated by two or more Contracting Parties in each of which parts of a geographical area of origin are situated – see Article 5(4) –, if such Contracting Parties have established an appellation of origin or geographical indication jointly in respect of a good originating in a trans-border geographical area of origin, as referred to in Article 2(2), second sentence.

1.08 Item (xvii) defines the term “beneficiaries”, following the concerns expressed in paragraph 199, fourth sentence, of the Report of the sixth session of the Working Group (LI/WG/DEV/6/7).

1.09 Item (xviii): as the New Act would be open to certain types of intergovernmental organizations, the accession criteria for intergovernmental organizations have been set out in Article 28(1)(iii).

NOTES ON ARTICLE 2: SUBJECT-MATTER

2.01 The subject-matter to which the New Act would apply, as drafted, namely appellations of origin and geographical indications, is defined in several different ways under national and regional laws. Moreover, these laws do not all identify the subject-matter by the terms appellation of origin and geographical indication. Article 2(1) establishes, for the purposes of the New Act only, common denominators for the titles of protection existing at the national or regional level, while recognizing the differences. The provision does this on the basis of the definitions of Article 2 of the Lisbon Agreement and Article 22.1 of the TRIPS Agreement. The prerequisite “protected in the Contracting Party of Origin” is based on Article 1(2) of the Lisbon Agreement.

2.02 The term “good” has been used throughout the English version of the Draft Revised Lisbon Agreement, to align the terminology used with the one contained in the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”).

2.03 The phrases “or another denomination known as referring to such area” and “or another indication known as referring to such area” concern denominations and indications that are strictly speaking not geographical, but which have obtained a geographical connotation. Such possibility also exists under the Lisbon Agreement, as confirmed by the Lisbon Union Council in 1970 (see the document entitled “Problems Arising from the Practical Application of the Lisbon Agreement” (AO/V/5 of July 1970) and the Report of the fifth session of the Lisbon Union Council (document AO/V/8 of September 1970)).

2.04 There is some leeway in respect of the cumulative requirements “natural and human factors” in the definition of an appellation of origin. The ‘geographical environment’ of the area of production referred to in Article 2(1)(i) may be determined predominantly by natural factors or predominantly by human factors. In this regard, reference is made to the discussion on this issue at the fourth session of the Working Group, where several delegations indicated the need for such flexibility, notably the Delegations of Indonesia and of Iran (Islamic Republic of). In addition, the Delegation of the Republic of Moldova invited Lisbon member States to give some thought to the case of those 20 appellations of origin for mineral water already registered under

the Lisbon Agreement, in order to determine in particular what the exact involvement of the human factor in that kind of product is, and more generally what would be the implication of the human factor in determining the substantial qualities of any other natural resource, such as stones, salt, or any other product mostly influenced by natural factors (see, in particular, paragraphs 72, 78 and 86 of the report of the fourth session of the Working Group (document LI/WG/DEV/4/7)).

2.05 The current Lisbon Agreement contains in its definition of “country of origin” (Article 2, paragraph (2)) a requirement of reputation. The phrase at the end of draft Article 2(1)(i) reading “and which has given the good its reputation” incorporates this requirement into the definition of an appellation of origin. The phrase refers back to the “denomination” that constitutes the appellation of origin, i.e., a denomination as qualified by Article 2(1)(i). With regard to the concerns expressed by some delegations on the possibility that this expression might lead to fact-finding missions, it was clarified at the ninth session of the Working Group that no such fact-finding missions had ever been undertaken either by the International Bureau or by Contracting Parties on the basis of the same provision that applies under the current Lisbon Agreement.

2.06 At the seventh session of the Working Group, it was proposed that an interpretative statement might be adopted at the Diplomatic Conference where the New Act would be concluded, indicating that “*notoriété*” and “*réputation*”, in the French version, and “*notoriedad*” and “*reputación*”, in the Spanish version, should be considered synonyms for the purposes of the New Act.

2.07 Following the concern expressed by several delegations at the fifth session of the Working Group as regards the geographical coverage of the notion of “geographical area of origin”, paragraph (2) makes it clear that the geographical area in question may consist of the entire territory of a Contracting Party or a region, locality or place in such territory. In addition, the second sentence of paragraph (2) specifies that appellations of origin or geographical indications for goods originating in trans-border areas of origin could also be the subject of international registrations under the New Act, without requiring Contracting Parties concerned, however, to establish such appellations of origin or geographical indications jointly. In this regard, see further Note 5.04. As regards the pending issue referred to in paragraph 4, item (ii), of the present document, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 22 to 27).

NOTES ON ARTICLE 3: COMPETENT AUTHORITY

3.01 As the competence for granting or registering rights in appellations of origin or geographical indications varies among national and regional systems for their protection, it is important for the New Act to require each Contracting Party to designate an entity responsible for the administration of the New Act in its territory and for communications with the International Bureau under the procedures of the New Act and its Regulations. Rule 4 of the Draft Regulations would require each Contracting Party to notify the name and contact details of the designated entity upon accession to the New Act.

3.02 Although it is preferable that a Contracting Party designates a single Competent Authority, there may be reasons for a Contracting Party to designate more than one, as indicated in the Notes on Rule 4(2). In such a case, the International Bureau may face difficulties in

determining to which of these Competent Authorities it should communicate a given notification. Rule 4(2) would therefore require the Contracting Party to provide clear indications in that respect. Failing such clarity, the International Bureau will be obliged to send its notifications to all the Competent Authorities the Contracting Party may have designated and leave it to them to determine which of them is responsible in respect of a given notification. By the same token, the International Bureau would be obliged to accept an application from such Contracting Party irrespective of which of the Competent Authorities presents it.

3.03 Following the discussion at the seventh session of the Working Group, a second sentence was added to Rule 4(1), for the benefit of the necessary transparency in regard to the applicable enforcement procedures in a Contracting Party in respect of appellations of origin and geographical indications.

NOTES ON ARTICLE 4: INTERNATIONAL REGISTER

4.01 Article 4 would make it clear that the International Register of the New Act, to be kept by the International Bureau, would not only incorporate the registrations effected under the New Act, but also the registrations effected under the Lisbon Agreement or the 1967 Act. Rule 7 elaborates on this.

4.02 As explained at the ninth session of the Working Group, there will be a period within which some Contracting Parties will have only acceded to the New Act while others will only be party to the current Lisbon Agreement and a third category will have become party to both. As regards the reference to the 1967 Act, it should be noted that the current Lisbon Agreement, as adopted in 1958, and the 1967 Act should be seen as one entity, in view of Article 16(1)(b) of the 1967 Act and the fact that one Lisbon member State is party to the current Lisbon Agreement, as adopted in 1958, without being party to the 1967 Act, while all other Lisbon member States have acceded to the 1967 Act.

NOTES ON ARTICLE 5: APPLICATION

5.01 Article 5(2) and Article 5(3) determine that international applications are to be presented to the International Bureau and are filed in the name of the beneficiaries of the appellation of origin or geographical indication, as defined in Article 1(xvii). As regards the entitlement to present an international application, reference is made to Note 1.06. As regards the pending issue referred to in paragraph 4, item (iii), of the present document, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 28 to 32). As a follow-up to the discussion on the issue mentioned in paragraph 40 of that draft Report, the Delegation of the United States of America has indicated to the Secretariat that the applicant of a certification mark under US law has to present the following declaration: "Applicant is entitled to exercise control over the use of the mark in commerce."

5.02 The text of Article 5(2)(ii) emerged from the discussions at the fifth and sixth sessions of the Working Group³. Following the discussions at the seventh session of the Working Group,

³ See, in particular, document LI/WG/DEV/5/7, paragraphs 168 and following, as well as document LI/WG/DEV/6/7, paragraphs 199, 211 and 220.

the term “legal entity” will not be defined in the New Act. However, the term should be understood broadly and cover, in any event, legal entities having legal standing to assert rights in a given appellation of origin or geographical indication, such as federations and associations representing holders of a right to use the appellation of origin or geographical indication. The phrase “or other rights in the appellation of origin or geographical indication” aims to make it clear that the term “legal entity” also covers owners of certification marks or collective marks.

5.03 Article 5(3) is an optional provision. It allows Contracting Parties who so desire to permit international applications to be presented directly to the International Bureau by the beneficiaries, as defined in Article 1(xvii), or a legal entity, as referred to in Article 5(2)(ii), as an alternative to submission by the Competent Authority. This option was included in view of the conclusion of the Chair of the Working Group, as reflected in of paragraph 176, final sentence, of the Report of the second session of the Working Group (document LI/WG/DEV/2/5) concerning a suggestion made in response to the Survey on the Lisbon System. In light of the various comments made at the third, fourth and fifth sessions of the Working Group, as regards the requirement of proof of protection in the Contracting Party of Origin, the current text would require that such direct international applications also simply be subject to the provisions in the Regulations concerning mandatory and optional particulars. Following the discussions at the seventh session of the Working Group, paragraph (3)(b) was added, making the application of paragraph (3)(a) subject to the deposit by a Contracting Party of a declaration indicating that it permits direct applications by the beneficiaries, as defined in Article 1(xvii), or a legal entity, as referred to in Article 5(2)(ii).

5.04 Article 5(4) is also an optional provision. The provision is presented in square brackets, as the inclusion of a provision specifically dealing with appellations of origin and geographical indications originating in trans-border geographical areas is still the subject of debate. Under the current Lisbon Agreement, Contracting Parties have registered appellations of origin in respect of goods originating in that part of a trans-border geographical area situated in their own territory. Article 5(4) would make it clear that the Lisbon System also allows for the international registration of an appellation of origin or a geographical indication in respect of goods originating in the whole trans-border geographical area, if the Contracting Parties concerned have jointly established the appellation of origin or the geographical indication. In such a case, they should also designate a common Competent Authority for the appellation of origin or geographical indication concerned. Of course, adjacent Contracting Parties would not be required to establish such appellations of origin or geographical indications jointly. Instead, each Contracting Party may prefer to file an individual separate application only for the part of the trans-border area situated in its territory, and of course not for the entire trans-border area. The same applies in respect of direct applications by the beneficiaries, as defined in Article 1(xvii), or a legal entity, as referred to in Article 5(2)(ii). Direct applications under Article 5(4)(b) – i.e., by the beneficiaries, as defined in Article 1(xvii), or a legal entity, as referred to in Article 5(2)(ii) – are only possible if the adjacent Contracting Parties have both deposited the declaration referred to in Article 5(3)(b). Article 5(4) only deals with the exceptional situation when the adjacent Contracting Parties have jointly established an appellation of origin or geographical indication and would require them to designate a common Competent Authority for the appellation of origin or geographical indication concerned. As regards the pending issue referred to in paragraph 4, item (ii), of the present document, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 22 to 27).

5.05 Article 5(5) makes a distinction between two types of mandatory particulars in respect of international applications, namely the particulars that are necessary for the application to obtain a filing date (see Article 6(3)) and other mandatory requirements (see Rule 5(2)).

NOTES ON ARTICLE 6: INTERNATIONAL REGISTRATION

6.01 The provisions presented in Article 6 are based on the premise that an internationally registered appellation of origin or geographical indication, in order to be protectable in all Contracting Parties, should, at least, meet the definition requirements of Article 2(1).

6.02 As regards the fact that international registrations under the Lisbon System do not specify the holder of the registration, reference is made to the discussion on Article 19(2), as reflected in the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 149, 151, 152, 155 and 167).

6.03 Article 6(5) is modeled on Rule 8(3) of the Regulations under the current Lisbon Agreement.

NOTES ON ARTICLE 7: FEES

7.01 In order to make Chapter II concerning the application and the international registration as complete as possible, an article concerning the registration fee and other fees has been included as Article 7. As regards the amount of such fees, reference is made to Rule 8, as well as to Article 24(4)(a).

7.02 As regards Article 7(3), it should be noted that, because geographical indications and appellations of origin are based on identifiers of geographical areas, there is a limit to the number that may ever exist. In any event, unlike in other registration systems in respect of intellectual property rights, there will never be a continuous and major flow of new applications. Consequently, provisions will be necessary to deal with any deficit that the Lisbon Union may be faced with, at least as long as the membership of the New Act will not encompass all WIPO member States. The current Lisbon Agreement provides in its Articles 11(3)(v) and 11(4)(b) that the fees should, under normal circumstances, be sufficient to cover the expenses of the International Bureau in maintaining the international registration service of the Lisbon Agreement; and that Lisbon member States should pay contributions in case of a deficit. These provisions are also contained in Article 24(3)(vi), 24(4)(a) and 24(5) of the draft New Act. However, an alternative approach is presented in Article 7(3), which would leave it to the Assembly to deal with a deficit, by establishing an *ad hoc* maintenance fee to be paid in respect of each international registration. Following the discussion at the tenth session of the Working Group, as reflected in paragraphs 168 to 191 of the draft Report of that session, Article 7(3) is presented with three Alternatives. Under Alternative A, the Assembly would be required to establish a maintenance fee. Under Alternative B, the Assembly would be permitted to establish such a fee. And under Alternative C, the New Act would not contain provisions dealing with maintenance fees.

7.03 Following the views expressed by several delegations at the fifth and sixth sessions of the Working Group (paragraphs 207-209 of document LI/WG/DEV/5/7, and paragraphs 200, 213-217, 221-226 of document LI/WG/DEV/6/7), Article 7(4) provides that reduced fees shall

be established for certain international registrations, in particular for those from developing countries or least-developed countries. Such fee reductions are to be established by virtue of a decision of the Assembly amending Rule 8.

7.04 The provisions of Article 7(5) result from the discussions at the eighth, ninth and tenth sessions of the Working Group. At the eighth session, the Delegation of the Russian Federation suggested that the New Act should allow a Contracting Party to require the payment of a fee to cover the cost of the examination of international registrations notified to its Competent Authority ("individual fee"). Following the discussions on this proposal, as reflected in document LI/WG/DEV/8/7 Prov., paragraphs 85 to 113, such possibility for Contracting Parties was taken up in the draft New Act, together with the option for the applicant to renounce protection in one or more Contracting Parties by not paying the individual fee. The reason for the introduction of such an individual fee would be to accommodate those countries or intergovernmental organizations, where the law requires applicants and right holders to pay a fee for the work to be carried out by the competent entity at the national or regional level. Moreover, despite the possible establishment of such fees in respect of an international registration under the New Act, the acquisition of rights to protect an appellation of origin or geographical indication in the country requiring the fee would still be cheaper and quicker under the international registration procedure of the New Act than under the national procedure. In addition, following discussions at the ninth session of the Working Group, an additional individual fee possibility was introduced, on the initiative of the Delegation of the United States of America, allowing Contracting Parties to require such a fee also on the basis of maintenance or renewal requirements. As regards the pending issue referred to in paragraph 4, item (vi), of the present document, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 192 to 208).

7.05 As discussed at the ninth session of the Working Group, an individual fee system could be introduced without a requirement for the applicant to designate the Contracting Parties in respect of which protection is requested. It was sufficient to provide that non-payment of an individual fee would result in renunciation of protection under Rule 16 in respect of the Contracting Party requiring the fee. Thus, an applicant would have the option to renounce protection in respect of one, some or all contracting parties requiring an individual fee, by simply not paying the individual fee or fees concerned. Any such renunciation could also be withdrawn under Rule 16, subject to payment of the individual fee in addition to the fee for the modification of the entry of the international registration in the International Register. Under Rule 16(4), the period for a Contracting Party to refuse protection in respect of the appellation of origin or geographical indication concerned would of course start at the date on which it receives the notification of the withdrawal of the renunciation.

7.06 The same would apply under Article 29(4) in respect of newly acceding Contracting Parties. In principle, all international registrations in force under the Lisbon System at the time of accession shall be protected by a newly acceding Contracting Party, except those in respect of which it notifies a refusal under Article 29(4) within the applicable time-limit, as specified in the notification it will receive from the International Bureau, or in respect of which an individual fee, that the newly acceding Contracting Party may require, is not paid.

7.07 At the ninth session of the Working Group, the Delegation of the European Union suggested that the possible introduction of individual fees be left to the Assembly. Lacking consensus in the Working Group, the text of Article 7(5) reflects two Alternatives: the proposal of the Delegation of the Russian Federation combined with the proposal of the Delegation of the

United States of America (Alternative A); and the proposal of the Delegation of the European Union (Alternative B).

7.08 For comparison, Annexes II to V of document LI/WG/DEV/10/4 show statistics concerning fees collected under the Madrid System for the International Registration of Marks, as contained in Section B.3 of the Madrid Yearly Review 2014 (WIPO Publication No. 940E/14), information about the geographical coverage of, and the average number of designations in, international registrations under the Madrid System, as contained in Section A.3 of the Madrid Yearly Review 2014, the current Schedule of Fees of the Madrid System and information on the individual fees that currently apply under the Madrid System.

NOTES ON ARTICLE 8: PERIOD OF VALIDITY OF INTERNATIONAL REGISTRATIONS

8.01 Article 2(1) specifies, *inter alia*, that international registrations effected under the New Act are dependent upon the protection of the appellation of origin or geographical indication in its Contracting Party of Origin. At the seventh and eighth sessions of the Working Group, the possible introduction of renewal fees was discussed. As a result, the present draft of the New Act proposes, in Article 7(3), that the Assembly may establish *ad hoc* maintenance fees in the event that the Lisbon Union faces a deficit. See further the Notes on Article 7 and Rule 8.

8.02 Three possibilities for cancellation are specified. The first possibility (paragraph (2)(a)) refers to a request for cancellation that the Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may submit at any time to the International Bureau. The second possibility (paragraph (2)(b)) concerns the situation that the registered appellation of origin or geographical indication is no longer protected in the Contracting Party of Origin, in which case its Competent Authority would be obliged to request cancellation of the international registration. The third possibility (paragraph (3)) may occur if and when the Assembly has established an *ad hoc* maintenance fee under Article 7(3) and this fee is not paid.

NOTES ON ARTICLE 9: COMMITMENT TO PROTECT

9.01 The starting point for Article 9(1) is the current Lisbon Agreement, which in Article 1(2) stipulates that the Lisbon member States undertake to protect on their territories the appellations of origin of the other Contracting Parties, under the terms of the Agreement. The corresponding provisions of the Madrid Protocol and the Geneva Act of the Hague Agreement require international registrations to be protected in the same way as the Contracting Parties protect national trademark or industrial design registrations. Similarly, the current draft of Article 9(1) intends to reflect the different types of systems for the protection of geographical indications and appellations of origin around the world by stipulating that: “Each Contracting Party shall protect registered appellations of origin and geographical indications on its territory, within its own legal system and practice.” This text is modeled on Article 1 of the TRIPS Agreement.

9.02 Article 9(1) also recognizes that there are countries that do not distinguish as between appellations of origin and geographical indications. It has been a clear understanding in the

Working Group since its second session, that the New Act would not require Contracting Parties to make such distinction. However, Contracting Parties that do not make such a distinction – but provide protection under Chapter III on the basis of a broader definition corresponding to the definition of a geographical indication under Article 2 – will be obliged to provide such protection not only in respect of geographical indications, but also in respect of appellations of origin registered under the New Act. This understanding is already reflected in paragraphs 7 and 8 of document LI/WG/DEV/2/2, paragraphs 79 and 80 of document LI/WG/DEV/2/5 and paragraph 56 of document LI/WG/DEV/3/4.

9.03 One of the consequences of the phrase “within its own legal system and practice but in accordance with the terms of this Act”, would appear to be that the national or regional law of a Contracting Party will determine whether and to what extent the enforcement of rights in a geographical indication or appellation of origin can be limited due to acquiescence.

NOTES ON ARTICLE 10: PROTECTION UNDER LAWS OF CONTRACTING PARTIES AND OTHER INSTRUMENTS

10.01 Paragraph (1) leaves Contracting Parties free as regards the form of the legal protection under which they provide the protection to be provided under the New Act in respect of registered appellations of origin or geographical indications. In addition to the form of protection, Contracting Parties would also remain free to determine the name of the title of protection granted under their own legal system – for example, the English term under EU law for “*appellation d’origine*” is not “appellation of origin”, but “designation of origin”. Another example relates to China, which under its Trademark Law allows for the registration of geographical indications as certification marks on the basis of a definition that contains elements of both Article 2(1)(i) and 2(1)(ii) of the draft New Act.

10.02 Reference is also made to Notes 1.02 and 9.02.

10.03 The provisions of paragraph (2) establish a safeguard clause in respect of other forms of protection that may be available in a Contracting Party than the protection to be accorded under the New Act. As stipulated in Article 15(2), a Contracting Party that has issued a refusal under Article 15 in respect of a registered appellation of origin because it takes the view that the denomination fails to meet the definition of an appellation of origin, should nevertheless provide protection to the denomination as a geographical indication, if the denomination meets the definition of a geographical indication. Reference is also made to Article 19(4) in this regard. The wording “shall not in any way affect” would appear to reflect this aspect more appropriately than the wording “already granted”, as contained in Article 4 of the current Lisbon Agreement, which could be interpreted to mean that the protection was already available in the country in question, for example by virtue of a prior bilateral agreement.

10.04 At the same time, the provisions of paragraph (2) would confirm that the New Act, which would stipulate the level of protection to be accorded in respect of registered appellations of origin and geographical indications, would not itself be an obstacle to the possibility for Contracting Parties to establish more extensive protection than required under the New Act. Obviously, such other protection should not diminish or interfere with the enjoyment of the rights afforded by the New Act.

NOTES ON ARTICLE 11: PROTECTION IN RESPECT OF REGISTERED APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS

11.01 At its sixth session, the Working Group agreed on the basic approach in respect of Articles 11 and 12. At the seventh, eighth, ninth and tenth sessions of the Working Group, the text was further refined. At the eighth session of the Working Group, it became clear that not only item (ii) – based on the wording of Article 3 of the current Lisbon Agreement – but also item (iii) of Article 11(1)(a) is problematic for a number of countries that are not party to the Lisbon Agreement or the 1967 Act, as the terms used in these items are alien to the legal framework of these countries. Current Lisbon member States, however, attach great importance to the terms used in these items. A possible way out, as contained in Article 11(3) of document LI/WG/DEV/9/2 and modeled on Article 16.3 of the TRIPS Agreement, as adapted in order to relate to geographical indications and appellations of origin, was discussed at the ninth session of the Working Group. As regards the pending issue referred to in paragraph 4, item (vii), of the present document, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 52 to 73). As a result, Article 11 presents various Alternatives for a way out. Among these Alternatives, two text proposals are presented in respect of Article 11(1)(a)(ii) and (iii). If Alternative B would prevail, there would be no need for Article 11(3), except for Alternative D, as presented in that provision, to the extent that that Alternative would allow for a declaration-based alternative for Contracting Parties in respect of Article 11(1)(a)(i). Alternative C of Article 11(3) concerns a text based on Article 16.3 of the TRIPS Agreement and Article 4(1)(b) of the WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks.

11.02 The final part of Article 11(1)(a) clarifies, *inter alia*, that, when the registered appellation of origin or geographical indication is not reproduced in exactly the same way, such use is also covered by the provisions of Article 11(1)(a) if the differences are immaterial. The footnote to Article 11(1)(a) clarifies that, if the protection of a given registered appellation of origin or geographical indication is subject to an exception in the Contracting Party of Origin, such exception may also be applied by the other Contracting Parties.

11.03 The purpose of Article 11(2) is to prevent the registration of trademarks that consist of or contain a registered appellation of origin or a registered geographical indication by someone not authorized to use the registered appellation of origin or geographical indication. The word "trademark" should be understood in the broadest possible sense, so as to include also collective and certification marks. However, such registrations of trademarks containing a registered appellation of origin or geographical indication by someone who is authorized to use the registered appellation of origin or geographical indication would be acceptable, unless the person in question does so in a way that conflicts with any of the provisions of Article 11(1). In Contracting Parties that protect registered appellations of origin and geographical indications through trademark legislation, the registered appellation of origin or geographical indication will by definition be incorporated in a trademark. Moreover, holders of the right to use a registered appellation of origin or geographical indication may own a trademark that contains the registered appellation of origin or geographical indication as part of the trademark.

11.04 Article 11(2) shall be without prejudice to Article 13(1), which addresses the issue of prior trademark rights. In order to better reflect the priority principle, as identified by the word "prior" in Article 13(1), the word "later" was inserted in Article 11(2), following the discussions at the ninth session of the Working Group.

11.05 Following the discussions at the seventh session of the Working Group, Article 11 no longer contains provisions explicitly dealing with homonymous appellations of origin and geographical indications. The footnote to Article 11 explains the existing practice under the Lisbon Agreement and the 1967 Act in respect of appellations of origin that are the subject of an application and that happen to consist of or contain a term occurring also in another appellation of origin. As regards the pending issue referred to in paragraph 4, item (viii), of the present document, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 74 to 77).

NOTES ON ARTICLE 12: PROTECTION AGAINST BECOMING GENERIC

12.01 At its sixth session, the Working Group agreed on the basic approach in respect of Articles 11 and 12. The square brackets around “[be considered to have]” reflect the difference of view as to whether the wording of Article 6 of the current Lisbon Agreement should be used or more straightforward wording.

12.02 The position of anyone who was using a denomination constituting a registered appellation of origin or geographical indication prior to the date on which the international registration took effect in the Contracting Party concerned should be considered safeguarded by Article 15(3). In this connection, the footnote to Article 12 is meant to make it absolutely clear that the provision only deals with generic use initiated after protection of the registered appellation of origin or geographical indication became effective in a given Contracting Party. The term “generic” is defined in the footnote, taking into account the provisions of Article 24.6 of the TRIPS Agreement.

12.03 At the eighth session of the Working Group, it was confirmed that Article 12 is problematic for a number of countries. If its text is maintained, these countries would need an alternative similar to Article 11(3) or the option of making a reservation under Article 30. The square bracketed phrase at the end of Article 12 reflects the concern raised at the ninth session of the Working Group that, under trademark-based protection systems for geographical indications, the factual situation in the market-place would determine whether a term has become generic or not.

12.04 The phrases “the denomination constituting” and “the indication constituting” appear in square brackets, following the discussions at the ninth session of the Working Group. The question is whether these phrases can be removed as being unnecessary or should be retained as references to the factual use made of such a denomination or indication. For comparison, Article 6 of the current Lisbon Agreement does not mention “appellation of origin”, but “appellation”.

12.05 As regards the pending issue referred to in paragraph 4, item (ix), of the present document, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 78 to 88).

NOTES ON ARTICLE 13: SAFEGUARDS IN RESPECT OF OTHER RIGHTS

13.01 In view of the discussion at the sixth session of the Working Group, Article 13 no longer incorporates the relevant provisions of the TRIPS Agreement by reference, but specifies

how the provisions of the TRIPS Agreement in respect of prior trademark rights and certain other rights would apply under the New Act.

13.02 Following the discussion on Article 13(1) at the ninth and tenth sessions of the Working Group, the provision is presented on the basis of two Alternatives, i.e. Article 13(1) as contained in document LI/WG/DEV/8/2 (Alternative A) and a text proposed by the Delegation of the United States of America at the eighth session of the Working Group (Alternative B). As regards the pending issue referred to in paragraph 4, item (x), of the present document, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 89 to 102).

13.03 The text of Alternative A combines elements of Articles 17 and 24.5 of the TRIPS Agreement. The text of Alternative B builds only on Article 17 of the TRIPS Agreement. According to the WTO Panel Reports on the disputes initiated by Australia and the United States of America, respectively, against the European Union concerning EC Regulation 2081/92, the coexistence provisions under that Regulation in respect of, on the one hand, protected appellations of origin and geographical indications and, on the other hand, prior trademarks can be regarded as limited exceptions under Article 17 of the TRIPS Agreement, which allows for limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties. It would seem that, in cases of conflicts, as referred to in the chapeau of Article 13(1), the Contracting Party concerned may decide that the prior trademark prevails or that the prior trademark and the registered appellation of origin or geographical indication may coexist, as long as the legitimate interests of the owner of the prior trademark are taken into account as well as those of interested parties holding rights in respect of the registered appellation of origin or geographical indication and other third parties.

13.04 The phrase at the beginning of Article 13(1), reading "Without prejudice to Articles 15 and 19", clarifies that Article 13(1) would apply if and when a Contracting Party does not submit a declaration of refusal on the basis of the existence of a prior trademark and as long as it does not invalidate the effects of the international registration on the basis of the prior trademark.

13.05 The chapeau of Article 13(1) refers to trademarks that have been applied for or registered as well as trademark rights that have been acquired through use. The reference to trademark rights acquired through use is not meant to create any obligation whatsoever on the part of Contracting Parties to provide that trademark rights can be acquired merely through use, but only that, if trademark rights can be acquired through use in a Contracting Party, these will also benefit from the safeguards in respect of prior trademark rights, as specified in the provision.

13.06 The fact that Article 13 no longer mentions the possibility, for right holders of prior trademarks and holders of the right to use an appellation of origin, to negotiate the modalities of a possible termination of use under the prior trademark, as contained in Article 12 of document LI/WG/DEV/4/2, does not mean to indicate that such possibility would not exist under Article 13 of the present draft. The sentence has been removed because of the comments made during the fourth session of the Working Group, that the existence of such a possibility is obvious and its specification in the New Act, therefore, unnecessary.

13.07 Article 13(2) is based on Article 24.8 of the TRIPS Agreement: "The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that

person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public."

13.08 Article 13(3) provides a safeguard in respect of plant variety and animal breed denominations only. Other rights are safeguarded if and when used as a ground for refusal under Article 15. Whether they can also be used as a ground for invalidation under Article 19 will depend on the outcome of further discussions in respect of Article 19(1). Lacking a refusal, the Contracting Party may decide, under Article 17(1), that a transitional period shall apply before use under such other right must be discontinued. See further Note 17.02.

NOTES ON ARTICLE 14: LEGAL REMEDIES AND LEGAL PROCEEDINGS

14.01 Article 14 is based on the provisions contained in Article 8 of the Lisbon Agreement and the 1967 Act. This provision has been re-worded to take into account the concerns expressed by some delegations at the sixth session of the Working Group (in particular, paragraphs 97 and 163 of the Report contained in document LI/WG/DEV/6/7). As a result, the provision would simply require national or regional legislation to provide for and make available effective legal remedies and legal proceedings for the protection and enforcement of registered appellations of origin and registered geographical indications. The word "legal" is not meant to exclude the application of administrative measures.

NOTES ON ARTICLE 15: REFUSAL

15.01 Article 15 concerns the procedure for issuing refusals following the receipt of a notification of international registration. As suggested during the fourth session of the Working Group, time limits are not specified in the New Act but in the Regulations, so that modifications can be adopted by the Assembly of the Special Union and would not require a diplomatic conference, as would be the case if time limits were specified in the New Act itself. The provision is based on Draft Provision G, as contained in document LI/WG/DEV/3/2 and is a redrafted version of Article 5(3) of the current Lisbon Agreement.

15.02 As regards Article 15(2), please refer to Note 10.03.

15.03 Article 15(3) introduces the obligation for Contracting Parties to establish procedures enabling interested parties to present possible grounds for refusal to the Competent Authority and request the Competent Authority to notify a refusal under Article 15(1). As under the current Lisbon System, refusals can be based on any ground (see Note 16.01).

15.04 As regards Article 15(5), interested parties affected by a refusal might, alternatively, have the opportunity to resort to arbitration or mediation.

NOTES ON ARTICLE 16: WITHDRAWAL OF REFUSAL

16.01 The possibility to negotiate the withdrawal of a refusal is explicitly mentioned in Article 16(2). The text of the provision results from the discussions at the ninth and tenth sessions of the Working Group. As mentioned in the Records of the 1958 Diplomatic Conference where the Lisbon Agreement was concluded, "the procedure envisaged provides

countries, which receive the notification of an appellation of origin via the International Bureau, with the possibility to oppose any situation that exists *de facto* or *de jure* that would prevent protection being granted on all or part of the territory of the restricted Union. The period of one year from the time the notification is received is easily sufficient to allow such opposition. A refusal must be accompanied by the grounds on which the country decides not to grant protection. These grounds constitute a possible basis for discussion for the purpose of reaching an understanding⁴.

16.02 The term “interested parties” refers to the same persons referred to in Article 15(5). The term also appears in Articles 22 and 23 of the TRIPS Agreement.

16.03 Reference is also made to Article 24.1 of the TRIPS Agreement, which provides that WTO members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23 and that the exception provisions of Article 24.4 through 24.8 shall not be used by a WTO member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, WTO members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

16.04 As regards the pending issue referred to in paragraph 4, item (xi), of the present document, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 136 to 148).

NOTES ON ARTICLE 17: PRIOR USE

17.01 Article 17(1) of the draft New Act clarifies that the provisions of Article 5(6) of the current Lisbon Agreement would not be applicable with regard to use under any of the rights safeguarded under Article 13. Neither would Article 17(1) prejudice the right of a Contracting Party to apply the exception specified in footnote 2 to Article 11(1)(a). Footnote 3 to Article 12 defines what should be considered to be a “generic denomination or indication”.

17.02 Under Article 24.4 of the TRIPS Agreement, WTO members are not required to prevent continued and similar use of a particular geographical indication of another WTO member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date. Under the New Act, the same effect could be achieved, if the Contracting Party concerned notifies a refusal under Article 15, for example as a result of the procedure that the Contracting Party has put in place, under Article 15(3), allowing interested parties to submit requests to that effect. Any prior use can be used as a ground for refusal, but if prior use other than that referred to in Note 17.01 is not used as a ground for refusal, the phasing out provisions of Article 17(1) would be applicable. Whether a Contracting Party can also use such prior use as a ground for invalidation of the effects of an international registration in its territory will depend on the outcome of the discussions on Article 19. Under Alternative A of Article 19(1), the initiation of invalidation

⁴ Unofficial translation of the official French text of the Acts of the Diplomatic Conference that adopted the Lisbon Agreement in 1958 (emphasis added).

proceedings on the basis of prior use, as referred to in Article 17(1), would probably result in suspension of the application of any phasing-out period for the duration of the invalidation proceedings.

17.03 As suggested during the fourth session of the Working Group, time limits are specified in the Regulations, so that modifications can be adopted by the Assembly of the Special Union and would not require a diplomatic conference, as would be the case if time limits were specified in the New Act itself.

17.04 A defined period for the termination of prior use may also be applied in case a refusal is withdrawn or in case a statement of grant of protection is notified following a refusal.

17.05 In view of the safeguards under Article 13 in respect of the prior rights addressed in that provision, the New Act would not contain phasing out periods in respect of prior uses under such rights, except to the extent that such prior rights incorporate a registered appellation of origin or geographical indication as a generic denomination or indication, and the prior rights manifestly do not extend to that denomination or indication, as specified in footnote 4 to Article 17.

17.06 Article 17(2) clarifies that withdrawal of a refusal that was based on use under a prior trademark or other right addressed in Article 13 would not mean that Article 13 would no longer apply. At the same time, the provision clarifies that withdrawal of such a refusal because of the cancellation, revocation, non-renewal, or invalidation, of the prior trademark or other prior right makes Article 13 inapplicable. Article 17(2) only applies in respect of cases of coexistence allowed for under the law of a Contracting Party. If a Contracting Party does not allow for coexistence, it can issue a declaration of refusal under Article 15 or invalidate the effects of the international registration in its territory under Article 19. In a Contracting Party that allows for coexistence, a situation of coexistence would be established following the withdrawal of a refusal, except when the withdrawal was the result of the cancellation, revocation, non-renewal, or invalidation, of the prior trademark or other right referred to in Article 13.

17.07 As regards the pending issue referred to in paragraph 4, item (xii), of the present document, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 111 to 123).

NOTES ON ARTICLE 18: NOTIFICATION OF GRANT OF PROTECTION

18.01 Article 18 concerns the notification of a grant of protection in respect of a registered appellation of origin or geographical indication, and its subsequent publication by the International Bureau. Such a notification can be presented within the one-year period after receipt of the notification of international registration – in case within that period it has become clear that no refusal will be issued – or following a refusal; if a decision has been taken to withdraw the refusal, a statement of grant of protection can be notified instead of a withdrawal of refusal. The procedures are specified in the Draft Regulations, based on Rule 11*bis* of the Regulations under the current Lisbon Agreement, which resulted from an amendment of the Regulations that entered into force on January 1, 2010.

NOTES ON ARTICLE 19: INVALIDATION

19.01 Article 19 deals with the possible invalidation of the effects of an international registration in a given Contracting Party. In view of the discussion at the eighth and ninth sessions of the Working Group, Article 19(1) presents two Alternatives. Under Alternative A, no limitation would apply as to the grounds on the basis of which invalidation can be pronounced, on the understanding that Contracting Parties shall provide that invalidation can be pronounced on the basis of a prior right, as referred to in Article 13. Possible grounds for invalidation would include, in particular: (1) grounds based on a prior right; (2) grounds based on genericness prior to the international registration; (3) grounds based on failure to meet the definition of an appellation of origin or a geographical indication; (4) grounds based on morality or public order; (5) grounds based on Article 10, or Article 10bis, of the Paris Convention; (6) grounds based on non-use; and (7) grounds based on the fact that a term has acquired a generic character. Alternative B would limit the grounds for invalidation to two situations: (1) the existence of a prior right, as referred to in Article 13; and (2) non-compliance with the definition. In case of the expiry of the protection in the Contracting Party of Origin, Article 8(2)(b) requires the Contracting Party of Origin to request cancellation of the international registration. As regards the pending issue referred to in paragraph 4, item (xiii), of the present document, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 149 to 167).

19.02 Article 5(6) of the Madrid Protocol and Article 15(1) of the Geneva Act of the Hague Agreement stipulate that, before an invalidation is pronounced, the holder of the international registration must have been given the opportunity of defending his rights. The current Lisbon Agreement does not contain a provision of this kind. However, this does not mean that a Lisbon member State is prevented from invalidating the effects of an international registration under the Lisbon Agreement. The Lisbon Union Assembly has recognized that such invalidations may take place and introduced Rule 16 in the Regulations under the Lisbon Agreement, with effect from April 1, 2002, requiring the Competent Authority to notify any such invalidation to the International Bureau, once the invalidation is no longer subject to appeal in the Lisbon member State in question, for its recording in the International Register. Article 19(1) of the draft New Act would confirm that the effects of an international registration under the Lisbon System in a given Contracting Party can be invalidated by that Contracting Party; and Article 19(2) would introduce a provision similar to those contained in the Madrid Protocol and the Geneva Act of the Hague Agreement, as referred to above. Following the discussions at the ninth session of the Working Group, Article 19(2) has been drafted in a positively worded manner. At its tenth session, the Working Group discussed the question as to who should be given the opportunity to defend his/her rights, as international registrations under the Lisbon System do not indicate who is the holder of the international registration – but only who is/are the holder(s) of the right to use the appellation of origin or geographical indication that is the subject of the international registration. This discussion is reflected in the draft Report of that session (document LI/WG/DEV/10/7 Prov., paragraphs 149, 151, 152, 155 and 167). The current draft of Article 19(2) gives this opportunity to the beneficiaries, as specified in Article 1(xvii), and the legal entity, as specified in Article 5(2) whether or not they are recorded in the International Register as the holder(s) of the right to use the appellation of origin or geographical indication.

19.03 As regards Article 19(4), reference is made to Note 10.03.

NOTES ON ARTICLE 20: MODIFICATIONS AND OTHER ENTRIES IN THE INTERNATIONAL REGISTER

20.01 A specific provision addressing the issue of modifications of international registrations and other entries in the International Register has been incorporated in the draft New Act.

NOTES ON ARTICLE 21: MEMBERSHIP OF THE LISBON UNION

21.01 This provision clarifies that the Contracting Parties to the New Act shall be members of the same Assembly as the States party to the Lisbon Agreement.

NOTES ON ARTICLE 22: ASSEMBLY OF THE SPECIAL UNION

22.01 The provisions of Article 22 are based, to a great extent, on those contained in Article 9 of the 1967 Act. However, whenever it appeared necessary, as in the case of the voting rights of intergovernmental organizations, such provisions have been supplemented by those contained in Article 21 of the Geneva Act.

22.02 As regards Article 22(2)(b), reference is made to the Guide to the Paris Convention by Prof. G.H.C. Bodenhausen, Note "(n)" on Article 13(2)(b) of the Paris Convention and Note "(d)" on Article 16(1)(b) of the Paris Convention.

22.03 With regard to intergovernmental organizations, Article 22(3)(a) is to be read in conjunction with Article 22(4)(b)(ii).

NOTES ON ARTICLE 23: INTERNATIONAL BUREAU

23.01 The provisions of this Article largely reproduce those contained in Article 10 of the 1967 Act.

NOTES ON ARTICLE 24: FINANCES

24.01 The provisions of this Article are modeled on those contained in the Geneva Act. Reference is made to Notes 7.01 and 7.02.

NOTES ON ARTICLE 25: REGULATIONS

25.01 This Article makes an express reference to the Regulations and defines the procedure for the amendment of certain provisions of the Regulations.

25.02 Paragraph (2) has been drafted along the lines of the corresponding provisions of the Singapore Treaty and the Patent Cooperation Treaty, which require the same threshold of a three-fourths majority.

25.03 Paragraph (3) establishes the superiority of the provisions under the New Act over those contained in the Regulations so that, in the event of conflict between the two sets of provisions, the provisions of the New Act shall prevail.

NOTES ON ARTICLE 26: REVISION

26.01 This provision, which confirms the standard rule that a treaty may be revised by a conference of the Contracting Parties, has been drafted along the lines of the provisions contained in the Singapore Treaty and the Geneva Act.

NOTES ON ARTICLE 27: AMENDMENT OF CERTAIN ARTICLES BY THE ASSEMBLY

27.01 The provisions of this Article are largely derived from those contained in the Geneva Act.

NOTES ON ARTICLE 28: BECOMING PARTY TO THIS ACT

28.01 The provisions of this Article have been drafted along the lines of Article 27 of the Geneva Act, as adapted in order to reflect accession criteria for intergovernmental organizations that would appear to take account of the conclusions of the Working Group on the Study contained in document LI/WG/DEV/2/3 and discussed at the second session of the Working Group.

28.02 Upon clarifying that the accession to the New Act is not limited to States party to the Paris Convention, paragraph (1)(ii) lays down the accession criteria in respect of States that are not party to the Paris Convention.

28.03 The last sentence of paragraph (3)(b) should be read in conjunction with Article 31 and would allow a member State of the Lisbon Agreement or the 1967 Act that is also a member State of an intergovernmental organization to apply the New Act instead of the Lisbon Agreement or the 1967 Act before the intergovernmental organization accedes.

NOTES ON ARTICLE 29: EFFECTIVE DATE OF RATIFICATIONS AND ACCESSIONS

29.01 This provision has been drafted along the lines of Article 28 of the Geneva Act to reflect the fact that both States and intergovernmental organizations may accede to the new instrument.

29.02 The first sentence of paragraph (4), which deals with the effects of accession, has been drafted along the lines of Article 14(2)(b) and (c) of the 1967 Act. A possibility to extend the time periods referred to in Article 15(1) and Article 17 of the draft New Act has been introduced in the last part of paragraph (4), in view of suggestions made in response to the Survey on the Lisbon system and the discussions at the second session of the Working Group.

29.03 As regards the bracketed reference to Article 7(5), see Note 7.06.

NOTES ON ARTICLE 30: PROHIBITION OF RESERVATIONS

30.01 This Article, which excludes any reservation to the New Act, reproduces the text of Article 29 of the Geneva Act.

NOTES ON ARTICLE 31: APPLICATION OF THE LISBON AGREEMENT AND THE 1967 ACT

31.01 Paragraph (1) deals with relations between States that are party both to the New Act and the Lisbon Agreement or the 1967 Act. The principle set out is that the New Act alone would apply to the relations between those States. Thus, with respect to persons who derive their right to file an international application from a State bound both by the New Act and by the Lisbon Agreement or the 1967 Act and who wish to obtain protection in other States party both to the New Act and to the Lisbon Agreement or the 1967 Act, as the case may be, only the provisions of the New Act will be applicable.

31.02 Paragraph (2) deals with relations between States party both to the New Act and to the Lisbon Agreement or the 1967 Act, on the one hand, and States party only to the Lisbon Agreement or the 1967 Act without being at the same time party to the New Act, on the other.

31.03 Reference is also made to Note 28.03.

NOTES ON ARTICLE 32: DENUNCIATION

32.01 This is a usual provision. To enable those who have organized their activities as a function of the accession of a Contracting Party to the New Act to carry out the necessary adjustments in the event of that Contracting Party denouncing the New Act, a minimum period of one year is provided in paragraph (2) for a denunciation to take effect. Additionally, paragraph (2) ensures that the New Act will continue to apply to any international application that is pending and to any international registration that is in force with respect to the Contracting Party that has denounced the New Act at the time the denunciation takes effect.

NOTES ON ARTICLE 33: LANGUAGES OF THIS ACT; SIGNATURE

33.01 Article 33 provides, in particular, that the New Act is to be signed in a single original in the six official languages of the United Nations and that all those texts will be equally authentic.

NOTES ON ARTICLE 34: DEPOSITARY

34.01 Article 34 states that the Director General is the depositary of the New Act. The nature of the duties of the depositary of a treaty is defined, and a list of those duties is given, in Articles 76 and 77 of the Vienna Convention on the Law of Treaties. Those duties consist, in

particular, in keeping the original text of the New Act, in establishing certified copies of the original text and in receiving the instruments of ratification or accession that are deposited.

LI/DC/6

December 22, 2014 (Original: English)

NOTES ON THE BASIC PROPOSAL FOR THE REGULATIONS UNDER THE NEW ACT
OF THE LISBON AGREEMENT ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL

prepared by the Secretariat

INTRODUCTION

The present document contains the Explanatory Notes on the Basic Proposal for the Regulations under the New Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, as contained in document LI/DC/4. Where a provision appears not to require explanation, no note has been provided.

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NOTES ON RULE 1: ABBREVIATED EXPRESSIONS

R1.01 Rule 1 represents an adapted version of the model of Rule 1 of the Regulations under the Singapore Treaty on the Law of Trademarks of 2006. On substance, the provision is based on Rule 1 of the current Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act.

NOTES ON RULE 2: CALCULATION OF TIME LIMITS

R2.01 The provisions of this rule are based on those contained in Rule 2 of the current Lisbon Regulations.

NOTES ON RULE 3: WORKING LANGUAGES

R3.01 The provisions of this rule largely reproduce those contained in Rule 3 of the current Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act.

NOTES ON RULE 4: COMPETENT AUTHORITY

R4.01 This rule is drafted in accordance with the practice that has developed under Rule 4 of the current Lisbon Regulations.

R4.02 As regards the responsibilities of Competent Authorities, reference is made to Article 3 of the draft New Act. In addition, Rule 4(1) makes clear that the name and contact details of the Competent Authority must be notified at the time of accession.

R4.03 Paragraph (2) should be seen in light of the fact that, unlike in other areas of industrial property, there may be more than one authority in a Contracting Party that is responsible for the grant of protection in respect of appellations of origin. For example, different protection systems may apply in respect of appellations of origin and/or geographical indications in a Contracting Party and different authorities may have been empowered for those different protection systems. In addition, as suggested at the eighth session of the Working Group, under the regional legislation of an intergovernmental organization, certain competencies of the Competent Authority of the intergovernmental organization may have been delegated to other authorities, for example the Competent Authority of a member State of the intergovernmental organization (document LI/WG/DEV/8/7 Prov, paragraph 41).

R4.04 Paragraph (3) has been drafted in recognition of the practical experience of the International Bureau with regard to changes of the name or contact details of a Competent Authority.

NOTES ON RULE 5: REQUIREMENTS CONCERNING THE APPLICATION

R5.01 Paragraph (1) corresponds to Rule 5(1) of the current Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act.

R5.02 The provisions of paragraphs (2) and (5) correspond to those of paragraphs (2) and (3) of Rule 5 of the current Lisbon Regulations, as adapted in accordance with the provisions of Article 5 of the draft New Act. Under item (vii) of paragraph (2)(a), where a Contracting Party of Origin provides for the registration of appellations of origin or geographical indications, the application is to indicate the date and registration number under which the appellation of origin or the geographical indication is protected in the Contracting Party of Origin. Where a Contracting Party grants protection by means of, for example, ministerial decrees or court decisions, the application is to indicate the title and date of such decree or decision.

R5.03 In view of the discussions at the ninth session of the Working Group, Rule 5(5) no longer provides for the possibility of including translations of the appellation of origin or the geographical indication in the application other than under Rule 5(2)(a)(iv). However, it should be noted that under Article 11 of the draft New Act – similarly to Article 3 of the current Lisbon Agreement – appellations of origin and geographical indications would be protected, *inter alia*, against their use in translated form.

R5.04 As regards the pending issue referred to in paragraph 4, item (xiv), of document LI/DC/5, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 33 to 37). Following the discussion at that session, Rule 5(3) is presented with three Alternatives. The provision is based on Rule 5(3)(vi) of the current Lisbon Regulations, which is an optional provision, adopted by the Lisbon Union Assembly in September 2011 and in force only since January 1, 2012. In view of the crucial nature of the information concerned under the national or regional legislation of a number of delegations, these delegations have proposed that the provision should be mandatory (Alternative A). Other delegations take the view that the information is not required under the legislation of many other countries and that the provision should therefore remain optional (Alternative B). At the eighth and ninth sessions of the Working Group, reference was made to Rule 7(2) of the Common Regulations under the Madrid Agreement and Protocol as a model. This suggestion could be combined with the model of Article 7(5) of the draft New Act. Thus, Alternative C provides that a Contracting Party could notify a declaration to the Director General stating that the information referred to in paragraph (3) is required under its legislation and should be notified to it together with the notification of the international registration. Failure to provide the information would then have the effect of a renunciation under Rule 16. In addition, paragraph (3) also specifies that the information can be provided later, in the context of a withdrawal of the renunciation under Rule 16(2).

R5.05 Rule 5(4) aims to accommodate those countries where the protection of registered appellations of origin and geographical indications would be subject to a use requirement. In this regard, reference is made to the discussions at the eighth session of the Working Group. Along the same lines, following a concern raised at the ninth session of the Working Group, Rule 5(4) also allows Contracting Parties which require an application to be signed by the owner, or the one entitled to use the appellation of origin or the geographical indication, to notify such

requirement to the Director General. Thus, for example, in respect of certification marks, the certifying body may be the owner signing the application, while declaring that the mark is intended to be used *bona fide* by persons authorized by the certifying body. In respect of a Contracting Party of Origin where appellations of origin and geographical indications are owned by the State, the question has arisen whether the Competent Authority would be entitled to sign the application on behalf of the State, in order to meet such a signature requirement in another Contracting Party. As regards the pending issue referred to in paragraph 4, item (xv), of document LI/DC/5, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 28 to 32 and 38).

R5.06 As regards the pending issue referred to in paragraph 4, item (xvi), of document LI/DC/5, reference is made to the draft Report of the tenth session of the Working Group (document LI/WG/DEV/10/7 Prov., paragraphs 39 to 51). Following the discussion at that session, Rule 5(5) reflects two Alternatives. There may be situations in which disclaimers should be mandatory, for example in the situation referred to in footnote 2 to Article 11, if so specified in the registration or other protection-granting instrument in the Contracting Party of Origin. Alternative A was proposed at the tenth session of the Working Group as a possible solution to the issue that the International Bureau will not be in a position to check whether an application should contain such a disclaimer. Alternative B would leave it to the applicant whether to present such a disclaimer or not.

NOTES ON RULE 6: IRREGULAR APPLICATIONS

R6.01 The provisions of this rule largely reproduce those contained in Rule 6 of the Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act.

NOTES ON RULE 7: ENTRY OF THE APPELLATION OF ORIGIN IN THE INTERNATIONAL REGISTER

R7.01 Paragraph (1) is modeled on Rule 7(1) of the Lisbon Regulations but has been adapted to reflect the fact that the International Register would incorporate the registrations effected both under the Lisbon Agreement and the 1967 Act and under the draft New Act (see Note 4.01 on the draft New Act, document LI/WG/DEV/7/4). As long as not all States party to the Lisbon Agreement or the 1967 Act have joined the New Act, the International Register should reflect for which States a registration is governed by the Lisbon Agreement and the 1967 Act or by the New Act. Of course, to the extent an application originates in a Contracting Party that is party to both the Lisbon Agreement or the 1967 Act and the New Act, the International Bureau must examine the application not only on the basis of the requirements of the New Act, but also on the basis of the requirements that apply under the Lisbon Agreement and the 1967 Act.

R7.02 The provisions of paragraphs (2) and (3) of this rule largely reproduce those contained in Rule 7 of the Lisbon Regulations with regard to the contents of registrations, the registration certificate and the notification of new registrations, as adapted in accordance with the provisions of the draft New Act.

R7.03 Paragraph (4) addresses the situation concerning international registrations of appellations of origin already recorded under the Lisbon Agreement or the 1967 Act, once the mutual relations between two States become governed by the provisions of Article 31(1) of the draft New Act.

NOTES ON RULE 8: FEES

R8.01 The provisions of Rule 8(1) are modeled on those contained in Rule 23 of the current Lisbon Regulations. However, in view of the discussions at the eighth, ninth and tenth sessions of the Working Group, the amounts appear in square brackets. For the reasons outlined in the Notes on Article 7, notably Note 7.02, the income from registration fees is unlikely ever to be sufficient to cover the cost of the operations under the Lisbon system. As reflected in Annex III, Table 12, of the WIPO Program and Budget for 2014/15, 98 per cent of the income of the Lisbon Union is from other sources than fees – namely, as the same table shows, from its share in general income features of WIPO – and the estimated income for the Lisbon Union is some 700,000 Swiss francs. Although this is not enough to cover the current staff cost of the Lisbon Registry, it should be borne in mind that the main activities of the Lisbon Registry currently to a large extent consist of the services it provides in respect of the revision of the Lisbon system and related promotion activities. In addition, the Lisbon Registry is engaged in a project aimed at automating its operations under the registration and notification procedures as much as possible.

R8.02 Rule 8(1)(v), 8(2) and 8(3) implement Article 7(5) and (6), which was added to the draft New Act so as to reflect the view expressed at the eighth session of the Working Group by a number of delegations representing countries that are not party to the Lisbon Agreement, that Contracting Parties should have the option to require a fee to cover the cost of their substantive examination of international registrations notified to them. Rule 8(2) and (3) are modeled on the corresponding provisions in the Common Regulations that apply in the context of the Madrid and Hague systems.

R8.03 Paragraphs (4) to (9) of Rule 8 are also modeled on the corresponding provisions applying in the context of the Madrid and Hague systems. They reflect the practice that also applies under the current Lisbon system.

NOTES ON RULE 9: REFUSAL

R9.01 The provisions of this rule reproduce those contained in Rule 9 of the current Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act.

R9.02 Rule 9(2)(v) is proposed in order to address the specific situation of international registrations refused in part by a Contracting Party because of the possible coexistence under the legislation of such Contracting Party with a prior right, notably a homonymous geographical indication or appellation of origin. By way of example, reference is made in this regard to paragraph 135 of the Report of the fourth session of the Working Group (document LI/WG/DEV/4/7).

R9.03 As discussed at the ninth session of the Working Group, Rule 9(2)(v) and (vi) would not create any obligation for a Contracting Party to provide for the possibility of partial refusals.

These provisions only apply where a Contracting Party is in a position, under its own legislation, to issue a partial refusal.

NOTES ON RULE 10: IRREGULAR NOTIFICATION OF REFUSAL

R10.01 The provisions of this rule reproduce those contained in Rule 10 of the current Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act.

NOTES ON RULE 11: WITHDRAWAL OF REFUSAL

R11.01 The provisions of this rule reproduce those contained in Rule 11 of the current Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act.

R11.02 Compared to the provisions of Rule 11 of the current Lisbon Regulations, a new provision (paragraph (2)(ii)) is proposed, requiring the reason for the withdrawal to be mentioned in the statement, in particular in case of partial withdrawals corresponding to partial refusals, as referred to in Rule 9(2)(v) or (vi) of these draft Regulations.

NOTES ON RULE 12: NOTIFICATION OF GRANT OF PROTECTION

R12.01 The provisions of this rule reproduce those contained in Rule 11*bis* of the current Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act.

R12.02 Compared to the provisions of Rule 11*bis* of the current Lisbon Regulations, a new provision (paragraph (2)(b)(iii)) is proposed, requiring the reason for the withdrawal to be mentioned in the statement, in particular in case of partial statements of grant of protection corresponding to partial refusals, as referred to in Rule 9(2)(v) or (vi) of these draft Regulations.

NOTES ON RULE 13: NOTIFICATION OF INVALIDATION OF THE EFFECTS OF AN INTERNATIONAL REGISTRATION IN A CONTRACTING PARTY

R13.01 The provisions of this rule reproduce those contained in Rule 16 of the current Lisbon Regulations, including the amendment adopted by the Assembly in September 2011, as adapted in accordance with the provisions of the draft New Act.

R13.02 Compared to the provisions of Rule 16(1) of the current Lisbon Regulations, it is proposed to mirror in item (iv) of paragraph (1) not only the situations covered by Rule 9(2)(vi) of these draft Regulations, but also the specific case of homonymous geographical indications and appellations of origin, as covered by Rule 9(2)(v).

NOTES ON RULE 14: NOTIFICATION OF TRANSITIONAL PERIOD GRANTED TO THIRD PARTIES

R.14.01 The provisions of this rule reproduce those contained in Rule 12 of the current Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act. Following the discussions at the seventh session of the Working Group, Rule 14(1)(iii) was amended by the introduction of the phrase concerning the submission of information on the scope of the transitional use.

NOTES ON RULE 15: MODIFICATIONS

R15.01 The provisions of this rule are modeled on those contained in Rule 13 of the current Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act.

R15.02 In Rule 15(1), a new item (vi) was added, so as to align the provision with those of Rule 16.

NOTES ON RULE 16: RENUNCIATION OF PROTECTION

R16.01 The provisions of this rule are modeled on those contained in Rule 14 of the current Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act.

R16.02 As regards the phrase “in whole or in part” in Rule 16(1) and (2), the question arose at the seventh session of the Working Group as to whether it would be possible to issue a renunciation in respect of only some of the products covered by the international registration. However, at the ninth session of the Working Group, the Chair concluded that the phrase, as contained in Rule 16, relates to the number of Contracting Parties in respect of which protection is renounced.

R16.03 Paragraphs (2) and (4) were added in view of the possibility that the reason why protection was renounced may disappear subsequently. In that case, the renunciation can be withdrawn, subject to payment of the fee that applies in respect of modifications.

R16.04 Rule 16 will also apply in case of non-payment of an individual fee under Article 7(6) or subsequent payment of such a fee.

NOTES ON RULE 17: CANCELLATION OF AN INTERNATIONAL REGISTRATION

R17.01 The provisions of this rule largely reproduce those contained in Rule 15 of the current Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act.

NOTES ON RULE 18: CORRECTIONS MADE TO THE INTERNATIONAL REGISTER

R18.01 The provisions of this rule reproduce those contained in Rule 17 of the current Lisbon Regulations, as adapted in accordance with the provisions of the draft New Act.

NOTES ON RULE 19: PUBLICATION

R19.01 Compared to Rule 18 of the current Lisbon Regulations, the reference to the Bulletin has not been retained, as publication may, in the future, take place on the WIPO web site.

NOTES ON RULE 20: EXTRACTS FROM THE INTERNATIONAL REGISTER AND OTHER INFORMATION PROVIDED BY THE INTERNATIONAL BUREAU

R20.01 The provisions of this rule reproduce those contained in Rule 19 of the current Lisbon Regulations.

NOTES ON RULE 21: SIGNATURE

R21.01 This rule reproduces Rule 20 of the current Lisbon Regulations.

NOTES ON RULE 22: DATE OF DISPATCH OF VARIOUS COMMUNICATIONS

R22.01 The provisions of this rule largely reproduce those contained in Rule 21 of the current Lisbon Regulations. As regards the additional phrase referring to the Administrative Instructions, reference is made to Section 9 of the Administrative Instructions that apply under the current Lisbon Agreement.

NOTES ON RULE 23: MODES OF NOTIFICATION BY THE INTERNATIONAL BUREAU

R23.01 The provisions of this rule are modeled on those contained in Rule 22 of the current Lisbon Regulations.

NOTES ON RULE 24: ADMINISTRATIVE INSTRUCTIONS

R24.01 The provisions of this rule largely reproduce those contained in Rule 23*bis* of the current Lisbon Regulations. However, the reference to the Bulletin has not been retained, for the reason mentioned in Note 19.01.

LI/DC/7

March 3, 2015 (Original: English)

COMPILATION OF PROPOSALS BY WIPO MEMBER STATES FOR AMENDMENTS TO
THE BASIC PROPOSAL FOR THE NEW ACT OF THE LISBON AGREEMENT ON
APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS

prepared by the Secretariat

INTRODUCTION

1. At its meeting of October 30 and 31, 2014, the Preparatory Committee for the Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications agreed to set a deadline of February 1, 2015, for all WIPO Member States to submit their proposals in writing for amendments to the Basic Proposal on issues that were identified as pending⁵ by the Working Group on the Development of the Lisbon System. The Secretariat would compile the said submissions and forward them to the Diplomatic Conference for information (document LI/R/PM/6, paragraph 11).

2. In accordance with this procedure, the present document compiles the submissions received from the following WIPO Member States:

Annex I:	Algeria
Annex II:	Chile
Annex III:	Colombia
Annex IV:	Israel
Annex V:	Republic of Korea
Annex VI:	Russian Federation
Annex VII:	Thailand
Annex VIII:	Togo
Annex IX:	Tunisia
Annex X:	United States of America

⁵ These pending issues are listed in paragraph 4 of document LI/DC/5.

ALGERIA**Outcome of Inter-Ministerial Coordination Meetings Concerning the Draft Revised Texts
of the Lisbon Agreement****Summary of Positions/Observations/Proposed Amendments**

Article/Rule	Current drafting	Proposed drafting
Article 2 Subject-Matter	<p>(i) any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation; as well as</p> <p>(ii) any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.</p>	
Article 3 Competent Authority	Each Contracting Party shall designate an entity which shall be responsible for the administration of this Act in its territory and for communications with the International Bureau under this Act and the Regulations. The Contracting Party shall notify the name and contact details of such Competent Authority to the	

	International Bureau, as specified in the Regulations.	
Article 5 Application	<p>(2) <i>[Application Filed by Competent Authority]</i> Subject to paragraph (3), the application for the international registration of an appellation of origin or a geographical indication shall be filed by the Competent Authority in the name of:</p> <p>(i) the beneficiaries; or</p> <p>(ii) a legal entity which has legal standing to assert the rights of the beneficiaries or other rights in the appellation of origin or the geographical indication, such as, for instance, a federation or association representing the beneficiaries, or a group of producers representing them, whatever its composition and regardless of the legal form in which it presents itself.</p>	<p><i>Proposal:</i> <i>[Application Filed by Competent Authority]</i> Subject to paragraph (3), the application for the international registration of an appellation of origin or a geographical indication shall be filed by the Competent Authority in the name of:</p> <p>(i) the beneficiaries; or</p> <p>(ii) a legal entity which has legal standing, under national law, to assert [...] geographical indication, such as, for instance, a federation or association representing the beneficiaries, or a group of producers representing them, whatever its composition and regardless of the legal form in which it presents itself.</p> <p>.</p>

Article/Rule	Current drafting	Proposed drafting
Article 5 Application	<p><i>[(4) [Possible Joint Application in the Case of a Trans-border Geographical Area] a) In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may agree to act as a single Contracting Party of Origin by filing an application jointly, through a commonly designated Competent Authority.</i></p> <p><i>(b) Such an application may also be filed by the beneficiaries, or a legal entity as referred to in paragraph (2)(ii), on the understanding that the adjacent Contracting Parties have all made the declaration referred to in paragraph (3)(b).]</i></p>	<p><i>Deletion:(4) [Possible Joint Application in the Case of a Trans-border Geographical Area] a) In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may agree to act as a single Contracting Party of Origin by filing an application jointly, through a commonly designated Competent Authority.</i></p> <p><i>(b) Such an application may also be filed by the beneficiaries, or a legal entity as referred to in paragraph (2)(ii), on the understanding that the adjacent Contracting Parties have all made the declaration referred to in paragraph (3)(b).]</i></p>
Article 7 Fees	<p><u>ALTERNATIVE A</u></p> <p><i>(3) [Possible Maintenance Fee] The Assembly may establish a fee to be paid for the maintenance of each international registration, if and to the extent to which receipts from the sources indicated in Article 24(3)(i) to (iv) do not suffice to cover the expenses of the Special Union.]</i></p> <p><u>ALTERNATIVE B</u></p> <p><i>(3) [Possible Maintenance Fee] The Assembly may establish a fee to be paid for the maintenance of each international registration, if and to the extent to which receipts from the sources indicated in Article 24(3)(i) to (iv) do not suffice to cover the expenses of the Special Union.</i></p>	

	<p><u>ALTERNATIVE C</u></p> <p>No provision on maintenance fees.</p> <p>(4) [<i>Fee Reductions</i>] Reduced fees shall be established by the Assembly in respect of certain international registrations of appellations of origin, and in respect of certain international registrations of geographical indications, in particular those in respect of which the Contracting Party of Origin is a developing country or a least-developed country.</p>	<p>(4) <i>Fee Reductions</i>] Reduced fees shall be established by the Assembly in respect of certain international registrations of appellations of origin, and in respect of certain international registrations of geographical indications, in particular those in respect of which the Contracting Party of Origin is a developing country or a least-developed country.</p>
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Article/Rule	Current drafting	Proposed drafting
Article 7 Fees	<p>(5) [Individual Fee] (Rule 8(3))</p> <p><u>ALTERNATIVE A</u></p> <p>(a) Any Contracting Party may, in a declaration, notify the Director General that the protection resulting from international registration shall extend to it only if a fee is paid to cover its cost of substantive examination of the international registration. The amount of such individual fee shall be indicated in the declaration and can be changed in further declarations. The said amount may not be higher than the equivalent of the amount required under the national or regional legislation of the Contracting Party diminished by the savings resulting from the international procedure. Additionally, the Contracting Party may, in a declaration, notify the Director General that protection resulting from the international registration shall be subject to maintenance or renewal requirements and fee payments.</p> <p>(b) Non-payment of such individual fee shall have the effect that protection is renounced in respect of the Contracting Party requiring the fee.</p> <p><u>ALTERNATIVE B</u></p> <p>(a) The Assembly may establish the possibility for Contracting Parties to adopt individual fees in order to cover the costs of substantive examination of international registrations.</p> <p>b) Non-payment of such individual fee shall have the effect that protection is renounced in respect of the Contracting Party requiring the fee.</p>	<p>(a) Any Contracting Party may, in a declaration, notify the Director General that the protection resulting from international registration shall extend to it only if a fee is paid to cover its cost of substantive examination of the international registration. The amount of such individual fee shall be indicated in the declaration and can be changed in further declarations. The said amount may not be higher than the equivalent of the amount required under the national or regional legislation of the Contracting Party diminished by the savings resulting from the international procedure. Additionally, the Contracting Party may, in a declaration, notify the Director General that protection resulting from the international registration shall be subject to maintenance or renewal requirements and fee payments.</p> <p>(b) Non-payment of such individual fee shall have the effect that protection is renounced in respect of the Contracting Party requiring the fee.</p>

<p>Article 8 Period of Validity of International Registrations</p>	<p>(2) [<i>Cancellation</i>] (a) The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time request the International Bureau to cancel the international registration concerned.</p> <p>(b) In case the denomination constituting a registered appellation of origin, or the indication constituting a registered geographical indication, is no longer protected in the Contracting Party of Origin, the Competent Authority of the Contracting Party of Origin shall request cancellation of the international registration.</p>	
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Article/Rule	Current drafting	Proposed drafting
<p style="text-align: center;">Article 9 Commitment to Protect</p>	<p>Each Contracting Party shall protect registered appellations of origin and geographical indications on its territory, within its own legal system and practice but in accordance with the terms of this Act, subject to any refusal, renunciation, invalidation or cancellation that may become effective with respect to its territory, and on the understanding that Contracting Parties that do not distinguish in their national or regional legislation as between appellations of origin and geographical indications shall not be required to introduce such a distinction into their national or regional legislation.</p>	
<p style="text-align: center;">Article 10 Protection Under Laws of Contracting Parties or Other Instruments</p>	<p>(1) <i>[Form of Legal Protection]</i> Each Contracting Party [...] meets the substantive requirements of this Act.</p> <p>(2) <i>[Protection Under Other Instruments]</i> The provisions of this Act shall not in any way affect [...] under its national or regional legislation, or under other international instruments.</p>	
<p style="text-align: center;">Article 11 Protection in Respect of Registered Appellations of Origin and Geographical Indications</p>	<p>(1) <i>[Content of Protection]</i> Subject to the provisions of this Act, each Contracting Party shall extend to a registered appellation of origin, or a registered geographical indication, protection against:</p> <p>(a) any use of the appellation of origin or the geographical indication</p>	

	<p>(i) in respect of goods of the same kind as those to which [...] other applicable requirements for using the appellation of origin, or the geographical indication; or</p> <p style="text-align: center;"><u>ALTERNATIVE A</u></p> <p>(ii) which would amount to its usurpation or imitation [or evocation]; or</p> <p>(iii) which would be detrimental to, or exploit unduly, its reputation,</p> <p style="text-align: center;"><u>ALTERNATIVE B</u></p> <p>(ii) in respect of goods that are not of the same kind [...] and the beneficiaries, and is likely to damage the interests of the beneficiaries.</p>	
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Article/Rule	Current drafting	Proposed drafting
<p>Article 11 Protection in Respect of Registered Appellations of Origin and Geographical Indications</p>	<p>(3) <i>[Declaration Concerning the Content of Protection]</i></p> <p><u>ALTERNATIVE A</u></p> <p>Any State or intergovernmental organization may declare, [...]if such use would indicate or suggest a connection between those goods and the beneficiaries, and is likely to damage the interests of the beneficiaries.</p> <p><u>ALTERNATIVE B</u></p> <p>Any State or intergovernmental organization may declare, [...] connection between those goods and the beneficiaries, and is likely to damage the interests of the beneficiaries.</p> <p><u>ALTERNATIVE C</u></p> <p>Any State or intergovernmental organization may declare, when depositing its instrument of ratification or accession, that the provisions of paragraph (1)(a)(ii) and (iii) [...], if such use:</p> <p>(i) would indicate a connection between those goods and the beneficiaries of the appellation of origin or the geographical indication, and would be likely to damage their interests;</p> <p>(ii) would be likely to impair or dilute in an unfair manner the distinctive character of the appellation of origin or the geographical indication; or</p>	<p><u>ALTERNATIVE C</u></p> <p>“Any State that the provisions of paragraph (1)(a)(ii) and (iii), extend to the registered appellation of origin [...] geographical indication, if such use:</p> <p>(i) would indicate a connection between those goods and the beneficiaries of the appellation of origin or the geographical indication, and would be likely to damage their interests;</p> <p>(ii) would be likely to impair or dilute in an unfair manner the distinctive character of the appellation of origin or the geographical indication; or</p> <p>(iii) would take unfair advantage of the distinctive character of the appellation of origin or the geographical indication.”</p>

	<p>(iii) would take unfair advantage of the distinctive character of the appellation of origin or the geographical indication.</p> <p><u>ALTERNATIVE D</u></p> <p>Any State or intergovernmental organization may declare, when [...] would indicate or suggest a connection between those goods and the beneficiaries, and is likely to damage the interests of the beneficiaries.</p>	
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Article/Rule	Current drafting	Proposed drafting
Article 12 Protection against Becoming Generic	Subject to the provisions of this Act, registered appellations of origin and registered geographical indications [are protected against acquiring a generic character] [cannot [be considered to have] become generic] ³ as long as [the denomination constituting] the appellation of origin, or [the indication constituting] the geographical indication, is protected in the Contracting Party of Origin [and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met].	“Subject to the provisions of this Act, registered appellations of origin and registered geographical indications cannot [be considered to have] become generic as long as [the denomination constituting] the appellation of origin, or [the indication constituting] the geographical indication, is protected in the Contracting Party of Origin and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met. ”
Article 13 Safeguards in Respect of Other Rights	(1) [<i>Prior Trademark Rights</i>] Without prejudice to Articles 15 and 19, where a registered appellation [...] or acquired through use, in good faith in a Contracting Party, <u>ALTERNATIVE A</u> The protection of that appellation of origin or geographical indication [...] and provided that the public is not misled. <u>ALTERNATIVE B</u> The protection of that appellation of origin or geographical indication in that Contracting Party shall be subject to the rights conferred by the prior trademark under national or regional law along with any applicable exceptions to those rights.	
Article 14 Enforcement	Each Contracting Party [...] interested party, whether a natural	“Each Contracting Party [...] interested party, whether a natural

Procedures and Remedies	person or a legal entity and whether public or private, depending on its legal system and practice.	person or a legal entity and whether public or private, depending on its legal system and practice and its national legislation. "
Article 15 Refusal	1) [<i>Refusal of Effects of International Registration</i>] (a) Within the time limit specified in the Regulations, the Competent Authority [...] refusal may be filed by the Competent Authority <i>ex officio</i> , if its legislation so permits, or at the request of an interested party.	

Article/Rule	Current drafting	Proposed drafting
<p>Article 16 Withdrawal of Refusal</p>	<p>(1) <i>[Procedures for the Withdrawal of Refusals]</i> A refusal may be withdrawn in accordance with the procedures specified in the Regulations. A withdrawal shall be recorded in the International Register.</p> <p>(2) <i>[Negotiations]</i> Where appropriate and without prejudice to Article 15(5), the Contracting Party of Origin may propose negotiations with a Contracting Party in respect of which a refusal has been recorded, in order to have the refusal withdrawn.]</p>	<p>(2) <i>[Negotiations]</i> Where appropriate and without prejudice to Article 15(5), the Contracting Party of Origin may propose negotiations with a Contracting Party in respect of which a refusal has been recorded, in order to have the refusal withdrawn in order to secure a refusal.]</p>
<p>Article 18 Notification of Grant of Protection</p>	<p>The Competent Authority of a Contracting Party may notify the International Bureau of the grant of protection to a registered appellation of origin or geographical indication. The International Bureau shall record any such notification in the International Register and publish it.</p>	<p>“The Competent Authority of a Contracting Party may notify the International Bureau of the grant of protection to a registered appellation of origin or geographical indication, within the time limits provided for in the Regulations regarding notification of refusal. The International Bureau shall record any such notification in the International Register and publish it.”</p>
<p>Article 19 Invalidation</p>	<p>(1) <i>[Grounds for Invalidation]</i> The grounds on the basis of which a Contracting Party may pronounce invalidation, in part or in whole, in its territory shall include:</p> <p><u>ALTERNATIVE A</u></p> <p>In particular, those based on a prior right, as referred to in Article 13.</p> <p><u>ALTERNATIVE B</u></p> <p>(i) a prior right, as referred to in Article 13, when the protection</p>	

	<p>granted to the registered appellation of origin or geographical indication has been successfully challenged and the court decision is final; or</p> <p>(ii) when compliance with the definition of an appellation of origin or geographical indication in the Contracting Party of Origin is not ensured anymore.</p>	<p>(ii) when compliance with the definition of an appellation of origin or geographical indication in the Contracting Party of Origin is not ensured anymore, has been successfully challenged, and the judicial decision is final.</p>
<p>Rule 5 Requirements Concerning the Application</p>	<p>2) [<i>Application – Mandatory Contents</i>]</p> <p>(vii) the identifying details, including the date of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin.</p>	

Article/Rule	Current drafting	Proposed drafting
<p>Rule 5 Requirements Concerning the Application</p>	<p>(3) <i>[Application – Particulars Concerning the Quality, Reputation or Characteristic(s)]</i></p> <p><u>ALTERNATIVE A</u></p> <p>The application shall further indicate particulars concerning, in the case of an appellation [...] shall be provided in a working language, but shall not be translated by the International Bureau.</p> <p><u>ALTERNATIVE B</u></p> <p>The application may further indicate particulars concerning [...] of production, and, in the case of a geographical indication [...]</p> <p><u>ALTERNATIVE C</u></p> <p>(a) To the extent [...] Director General.</p> <p>(b) In order to [...] Bureau.</p> <p>(c) Non-compliance [...] in subparagraph (a).</p> <p>(d) The Competent Authority [...].</p>	
<p>Rule 5 Requirements Concerning the Application</p>	<p>(5) <i>[Application – Protection Not Claimed for Certain Elements of the Appellation of Origin or the Geographical Indication]</i></p> <p><u>ALTERNATIVE A</u></p> <p>The application shall indicate whether or not the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which</p>	

	<p>protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin, specifies that protection is not granted for certain elements of the appellation of origin or the geographical indication. Any such elements shall be indicated in the application in a working language.</p> <p><u>ALTERNATIVE B</u></p> <p>The application may contain a statement to the effect that protection is not claimed for certain elements of the appellation of origin or the geographical indication.</p>	
<p>Rule 6 Irregular Applications</p>	<p>(1) <i>[Examination of the Application and Correction of Irregularities]</i> (a) Subject to paragraph (2), if the International Bureau finds that an application does not satisfy the conditions set out in Rule 3(1) or Rule 5, it shall defer registration and invite the Competent Authority or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii), to remedy the irregularity found within a period of three months from the date on which the invitation was sent.</p>	<p><u>Proposed amendment:</u> <i>[Examination of the Application and Correction of Irregularities]</i> Subject to paragraph (2), if the International Bureau finds that an application does not satisfy the conditions set out in Rule 3(1) or Rule 5, it shall defer registration and invite the Competent Authority or, [...], the beneficiaries or the legal entity referred to in Article 5(2)(ii), to remedy the irregularity found within a period of three months from the date on which the invitation was sent the date of receipt of the invitation.</p>

[Annex II follows]

CHILE**COMMENTS ON THE "PENDING ISSUES" IN THE DRAFT REVISED LISBON AGREEMENT ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS**

The Secretariat of the World Intellectual Property Organization (WIPO) has invited its members to send comments on the "outstanding issues" in the Draft Revised Lisbon Agreement on Appellations of Origin and Geographical Indications. Our country has actively participated in the sessions of the Working Group as an observer State, making suggestions and presenting drafting proposals. However, we are uncertain of the future of these proposals. We wish to be able to participate fully in the process, it being understood that the issues being addressed are of great importance and have implications within and outside the Lisbon Union. Many years have passed and substantial changes have occurred in the world since 1958. This is evidenced by the incorporation of a new legal category in the subject of the protection and the proposal that substantive regulations include geographical indications. It is therefore a logical consequence for us to be proponents of full and equal participation of all members of WIPO, in order that the outcome is truly representative of the organization in an inclusive and participatory spirit and reflect the times in which we live. This is in line with the Convention establishing WIPO which, among other things, enshrines promoting the "protection of intellectual property throughout the world through cooperation among States". It also applies recommendation 15 of the Development Agenda; it indicates that regulatory activities should be "inclusive and member-driven"; "take into account different levels of development"; and "be a participatory process, which takes into consideration the interests and priorities of all WIPO Member States".

That proposal, submitted to the Preparatory Committee, was not accepted at the time by the Members of the Union. In this context, we provide these comments, which are without prejudice to future discussions and comments during the process, as an expression of our legitimate interest that our observations are taken into consideration in a process that takes place within the World Intellectual Property Organization, of which we are a Member.

The Secretariat identified the following as pending issues:

- (i) **Article 7(2)(b), Article 8(3) and Article 24(3)(v) and related provisions concerning the possible introduction of maintenance fees**

Our delegation would like to reiterate its stance during the sessions of the Lisbon Working Group, where we expressed our support for the introduction of maintenance fees (Art. 7(2)(b)). The introduction of these fees is a useful way to deal with the budget deficit of the Lisbon Union. Taking this into consideration means that we believe that it should be possible to establish these fees without requiring the discontinuation of other financing (Art.24(3)). Furthermore, we consider it important to bear in mind that these types of fees are not dissimilar to others applicable under WIPO-administered agreements, such as the Madrid System and the Patent Cooperation Treaty.

Consistent with our support for the inclusion of maintenance fees for international registration of GI/AO, we consider it appropriate to envisage cancellation of the international registration in the event of non-payment of such fees (Art. 8(3)).

(ii) The possible re-introduction of the provisions of the current Lisbon Agreement dealing with contributions by members of the Lisbon Union

The current text of the Lisbon Agreement contemplates contributions from member countries of the Union if income from other sources (international registration fees, the proceeds from sales of publications of the International Office, donations, bequests and subsidies and rents, interests and other miscellaneous income) is insufficient. We believe that for the purposes of dealing with any budget deficits, it is a better alternative to include maintenance fees.

Therefore, the re-introduction in the Draft Agreement of rules that create a connection with the contribution of Members is to be regarded as an exceptional measure, as it has been throughout the existence of the Lisbon Agreement.

(iii) The various options under Article 11(1)(a) and Rule 11(3)

As to the level of protection, we believe that the only alternative text that is consistent with international regulations established by the TRIPS Agreement is Option D and so we would favor its inclusion in the Agreement. However, we consider that the extension of protection under the current Article 11 constitutes a negative precedent regarding the search for international consensus on the matter. The inclusion of broad concepts and the extension of protection to other products, contemplated in the case of wines and spirits in the TRIPS Agreement, would seriously hamper the increase in membership of the Lisbon Agreement. As has been previously pointed out, our interest has been geared towards building consensus which makes for an increase in the membership of this Agreement. Hence, we believe that it is not appropriate to incorporate in the Agreement rules that we know are not acceptable to a significant number of Member States that have for years sought to build international consensus in this area.

(iv) The content of Article 12 relating to generic protection

On this point, we would like to reiterate our support for the title "Protection Against Acquiring a Generic Character", as we believe that this should not be construed as an obligation incumbent upon the Contracting Party, as the alternative formulation seems to suggest. Accordingly, we favor the inclusion of that formulation in the text of the article.

We support the inclusion of the phrase in brackets at the end of Article 12. It seems appropriate that protection against the generic character of internationally registered GI/AO should remain not only when they are protected in the Contracting Party of origin, but also when the national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met.

(v) Safeguards in respect of other rights

Again, we would like to express our preference for Option B, which enshrines the principle of first in time, first in right, whose origin can be found in Article 17 of the TRIPS Agreement. Thus, coexistence is possible, but as an exception rather than a rule.

We also believe that paragraph 2 should remain in the text because it provides a practical approach to the problem, with solutions that take into account the specificities of each case.

(vi) Negotiations following a refusal

We maintain our request to remove paragraph 2 referring to negotiations.

(vii) Whether Rule 5(3) should be optional or mandatory

(viii) Transparency under Rule 5(5)(ii)

- (ix) **Implementation aspects of Article 1(xiv)**
- (x) **The content of Article 2(2) and Article 5(4) concerning trans-border geographical areas of origin.**

We believe that since the provision in Article 5(4) is optional, inclusion in the Treaty does not raise major difficulties.

- (xi) **Entitlement to file an application under Article 5(2)**
- (xii) **Article 7(5) and 7(6) and related provisions regarding the possible introduction of individual fees**
- (xiii) **The question of the Draft Agreed Statement contained in the footnote at page 1 under Article 11 and the relevant provisions**

Regarding this provision, we recall some of the background to the footnote at page 1 containing the Draft Agreed Statement.

Our country has participated constructively in this process so as to make the Lisbon Agreement an attractive proposition for potential new members. We believe that the inclusion of a rule that references the practice of homonymy in the Agreement is but one way to achieve an agreement that is consistent and in accordance with international reality. Moreover, its inclusion will provide a solution to practical problems faced today by Members of the Agreement who recognize AO and homonymous GI and cannot find clear guidelines on this matter in the Lisbon Agreement.

Originally, given the importance of the subject, this provision was treated as part and parcel of the articles of the draft revision and in our capacity as observers of this process, we support its inclusion. However, as a result of the lack of consensus among Members of the Agreement that have raised concerns about how this rule could affect the protection of AO and GI, as from the 7th session of the Working Group, this subject has been dealt with as an Agreed Statement.

We believe that at the least an Agreed Statement should be included in the revised version. Its absence would mean that there would be not one express reference in the Agreement to the recognition of AO and homonymous GI, implying lack of legal certainty and security for all Contracting Parties and beneficiaries. This is because such a concept has already been in existence for more than 20 years, since the adoption of the TRIPS Agreement. In addition, homonymy has been recognized in many international treaties, which, together with the sustained practice of Members of the Agreement, offers consistency with international law on the subject.

Finally, we recall that, as we have stated previously, this Agreed Statement does not require the admission of homonymy, but merely provides certainty to those Contracting Parties who employ this practice regarding the possibility of continuing to do so.

- (xiv) **Exhaustive list of grounds for the invalidation of Article 19(1)**

On this subject, we reiterate our support for Option A. We would also like to reiterate that it seems appropriate to incorporate the phrase "in accordance with national legislation". During the last session of the Lisbon Working Group, the motion was supported by other delegations and we believe this should be reflected in the text.

- (xv) **Declaration of intention to use Rule 5(4)**
- (xvi) **Amount of fees in Rule 8(1).**

[Annex III follows]

COLOMBIA**Comments by the Superintendencia de Industria y Comercio****Documents LI/DC/3 and LI/DC/4****Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration
Geneva, May 11 to 21, 2015**

1. In the Spanish version of Article 1 (viii) of the Draft New Act of the Lisbon Agreement, the appropriate term is "*repositorio oficial*", not "*repertorio oficial*".
2. In Article 1(xvii), beneficiaries should mean natural persons or legal entities that have the exclusive right over an appellation of origin (AO) or a geographical indication (GI), not persons entitled to use the AO or the GI.
3. Regarding Article 2(2) and Article 5(4) dealing with trans-border geographical areas and possible joint applications, the new formulation eliminates the clarity of the version of Article 5(4) presented at the eighth session of the Working Group, which states that in the trans-border areas of two contracting parties, each party may apply for registration in connection with its area of origin in the absence of an agreement.

Similarly, the new formulation does not allow for a situation where the product relates to a trans-border area and where the applicant is a legal entity with beneficiaries throughout that area, while the area also encompasses the territory of a Contracting Party and a non-contracting State or organization.

A possible solution would be that the Contracting Party or person may only delimit the geographical area that is part of the territory of the Contracting Party. In that case, Article 20, which deals with modifications, should include the possibility that before a Contracting Party that holds an appellation in a trans-border area jointly with another Contracting Party adheres to the Treaty, the registration may be modified to become a joint registration for a trans-border area.

Therefore it is proposed that a paragraph be added to govern a situation where a Contracting Party applies for an AO or a GI in a geographical area of origin of the Contracting Party, but which is also a trans-border area of a non-Contracting Party; or both are Contracting Parties but do not file a joint application. In such case, the solution should be to present a modification to be included in the international registration pursuant to Article 20 of the Act and Rule 15 of the Regulations.

Thus, the non-Contracting Party must become a member of the Agreement so that once it becomes a Contracting Party, it can, jointly with the Contracting Party that is the beneficiary of the registration, apply for its modification, such that the geographical area of origin, the parties to which it belongs and the beneficiaries of the AO or the GI are modified. The following formulation is proposed:

(iii) If the geographical area of origin is a trans-border area shared with a non-Contracting Party to this Agreement, it should be possible to apply jointly for a modification of the international registry with regard to the geographical area of origin

in accordance with Article 20 of this Act and Rule 15(i), (iii) and (iv) of the Regulations, when the non-Contracting Party becomes a member of the Act.

4. Regarding Article 6, which states from which date the registration is taken to have been effected, it is important to make clear that the details which identify the beneficiaries or legal entities referred to in Article 5(2)(ii) are mandatory for the determination of a date of registration and such details should be indicated at the time of filing of the application for international registration in accordance with Rule 5(2) of the Regulations.
5. Regarding details concerning the quality, reputation or distinctive characteristics of the product for which international registration is sought, Rule 5(3) offers three alternatives. It is suggested that Alternative A be adopted because it makes it mandatory for the applicant to provide this information when filing the application. Our argument is that the international registration is public and therefore it is important that people consulting it are able to find out these characteristics, which are the *raison d'être* of the protection: the link between the product and the geographical area over which rights are being, or have been, granted.
6. Rule 5(5) of the Regulations provides three alternatives for including in the application for international registration the decision by virtue of which protection is granted to an AO or a GI in the Contracting Party, where it is specified that protection is not granted for specific elements of the AO or GI. We propose the adoption of Alternative A, which provides that it is mandatory to include the decision document in the filing of the application, but with the further proviso that the copy of the decision should be filed in the original language of the registration, i.e. Alternative A with Alternative B(iii).
7. Regarding the reduced fees for international registration mentioned in Alternative C of Article 7, we propose that the calculation of these fees should not depend on whether a country is more or less developed, but instead on the economic strength of the beneficiaries or the legal entity mentioned in Article 5(2)(ii) and that the Secretariat and Director General conduct and present to the Assembly the economic study required for establishing the criteria under which fee reductions may be granted.
8. As to the validity of international registrations, the proposed inclusion of the expression “notwithstanding” in Article 8(3) is moot if, in any event, failure to pay the fee entails cancellation of the registration.
9. In accordance with Article 8 and Rule 17 governing cancellation, there are concerns regarding: (i) the effect in other contracting parties to the Agreement when an international registration is cancelled for failure to pay the maintenance fee; (ii) when the administration of a Contracting Party seeks the cancellation of the international registration for reasons other than the loss of the rights over the AO or the GI in its country of origin, will the effects also be lost in the other Contracting Parties? Our proposal is to adopt a similar provision to the one in the Madrid Protocol relating to the conversion of an international registration into a national registration where the causes

of the cancellation are other than the loss of the right in the party of origin, or when collective marks or certification are concerned.

10. Regarding the scope and content of the protection of AO and GI contemplated in Article 11 and granted by an international registration, we suggest that Alternative A be adopted, but it should include Alternative B(ii). This takes into account the fact that Andean legislation compels us to deny the AO or the GI if there is a previously registered mark. Thus, we propose that this article read as follows:

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

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

- (a) any use of the appellation of origin or the geographical indication*
 - (i) in respect of goods of the same kind as those to which the appellation of origin, or the geographical indication, applies not originating in the geographical area of origin or not complying with any other applicable requirements for using the appellation of origin, or the geographical indication; or*
 - (ii) in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies, if such use would indicate or suggest a connection between those goods and the beneficiaries, and is likely to damage the interests of the beneficiaries, even if the appellation of origin or the geographical indication is used with minor differences; if true origin of the goods is indicated; or if the appellation of origin, or the geographical indication, is used in translated form or accompanied by terms such as "style", "kind", "type", "make", "imitation", "method", "as produced in", "like", "similar", or the like;*
- (b) any other practice liable to mislead the consumer as to the true origin, provenance or nature of the goods.*

[Annex IV follows]

ISRAEL

Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration

Submission⁶ of the Government of Israel in response to the request of the Lisbon Working Group for amendments to the Basic Proposal on issues that were identified as pending and set forth in paragraph 4 of Document LI/DC/5 (December 22, 2014) - Notes On The Basic Proposal For The New Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration.

February 1, 2015

[i] Implementation aspects of Article 1(xiv) –

With regard to implementation aspects of Article 1(xiv), the Government of Israel proposes that the reference made to intergovernmental organizations be modeled on the provisions of Article 14 of the Protocol relating to the Madrid Agreement Concerning International Registration of Marks with respect to intergovernmental organizations.

[ii] the content of Article 2(2) and Article 5(4) concerning trans-border geographical areas of origin –

The Government of Israel proposes that the text of the Basic Proposal be amended to state expressly that applications in respect of a trans border area may be filed jointly or individually as is currently expressly set forth in Explanatory Note 5.04 (Document LI/DC/5, Dec. 22, 2014) which states: *"Instead, each Contracting Party may prefer to file an individual separate application only for the part of the trans-border area situated in its territory, and of course not for the entire trans-border area."*

Accordingly, it is proposed:

- (1) That the bracketed sentence in Article 2(2) be retained and to add to it the words "*or a part thereof*" immediately following the words "geographical area," such that the amended text will read: "[This does not exclude the application of this Act in respect of a geographical area of origin, as described in paragraph (1), consisting of a trans-border geographical area, *or a part thereof*, subject to Article 5(4)]" ;
- (2) With respect to Article 5(4) to add the words "*may act individually with respect to the part of the trans-border area situated in its territory or*" immediately following the words "the adjacent Contracting Parties" such that the amended text will read: "(a) In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties *may act individually with respect to the part of the trans-border geographical area situated in their territory or* may agree to act as a single

⁶ This submission is being made without prejudice to the right to make interventions on these points or other issues during the Diplomatic Conference or prior thereto.

Contracting Party of Origin by filing an application jointly, through a commonly designated Competent Authority.”

[iii] the entitlement to file an application under Article 5(2);

Still under inter-ministerial discussion.

[iv] Article 7(3), Article 8(3), Article 24(3)(vi) and related provision concerning the possible introduction of maintenance fees;

Still under inter-ministerial review.

[v] the possible re-introduction of the provisions of the current Lisbon Agreement dealing with contributions by members of the Lisbon Union;

Still under inter-ministerial discussion.

[vi] Article 7(5) and related provisions concerning the possible introduction of individual fees;

With respect to Article 7(5) the Government of Israel supports Alternative A (examination and renewal fees).

[vii] the various options in respect of Article 11(1)(a) and Article 11(3);

- (1) With respect to Article 11(1)(a) the Government of Israel supports Alternative B (on the understanding that Alternative A, like Alternative B, is intended to apply in respect of goods not of the same kind as those to which the registration refers).
- (2) With respect to Article 11(3) the Government of Israel supports inclusion of Alternative D.

[viii] the Draft Agreed Statement contained in footnote 1 to Article 11 and provisions relating to the same issue;

The Government of Israel supports maintaining the content of footnote 1 to Article 11 in the Basic Proposal, preferably by its incorporation into the Article itself or alternatively as a footnote.

[ix] the content of Article 12 concerning protection against becoming generic;

The Government of Israel supports retention of all the bracketed words in Article 12 and in maintaining the content of footnote 3 to Article 12.

[x] the content of Article 13(1) concerning safeguards in respect of prior trademark rights;

With respect to Article 13(1) the Government of Israel supports Alternative B.

[xi] the content of Article 16(2) concerning negotiations following a refusal;

With respect to Article 16(2) the Government of Israel proposes that the bracketed paragraph be deleted.

[xii] the content of Article 17 concerning the necessity of a phasing out period;

With respect to the Content of Article 17 the Government of Israel supports retaining subparagraph (1).

[xiii] whether Article 19(1) should establish an exhaustive or a non-exhaustive list of grounds for invalidation;

With respect to Article 19(1) the Government of Israel supports Alternative A (the open ended list).

[xiv] whether Rule 5(3) should be optional or mandatory;

With respect to Rule 5(3) the Government of Israel supports Alternative A.

[xv] the inclusion of Rule 5(4) permitting Contracting Party to require a declaration of intention to use in respect of a registered appellation or origin or a registered geographical indication;

Still under inter-ministerial review.

[xvi] promoting transparency under Rule 5(5);

With respect to Rule 5(5) the Government of Israel supports Alternative A.

[xvii] the amount of fees in Rule 8(1).

Still under inter-ministerial discussion.

[Annex V follows]

REPUBLIC OF KOREA**Comments on the Basic Proposal for the Revision of the Lisbon Agreement on Appellations of Origin and their International Registration**

The Republic of Korea appreciates this opportunity to submit comments on the Basic Proposal for the revision of the Lisbon Agreement on Appellations of Origin and their International Registration.

We recognize that protecting geographical indication is becoming of global importance in enhancing brand competitiveness for producers, enterprises, and nations. If this proposal is adopted in the Diplomatic Conference in May 2015, the consequence will be immense and far-reaching, not just among the 28 current Lisbon Union Member States but also among the other 160 WIPO Member States. However, we are concerned that the current Rules of Procedure of the Diplomatic Conference falls short of permitting full participation by all WIPO Member States.

It is our firm belief that the Diplomatic Conference to revise the Lisbon Agreement should be open to all WIPO Member States and should offer full participation including equal voting rights, in case the scope of protection by the revised Agreement would be enlarged or expended in comparison to that of the current Lisbon Agreement. We also believe that several fundamental issues need to be fully taken into consideration in order for the Lisbon System to attract broader a WIPO membership and form a truly global system. Therefore, we reassert the amendments to the Basic Proposal as follows:

1. Article 7(3) Maintenance Fee

We are concerned about the lack of financial sustainability of the Lisbon System. The current fee system needs to be improved in order to become self-financing structure and meet the benefit principle. Therefore, we support Article 7(3), which calls for the introduction of a maintenance fee.

2. Article 11(1) Content of Protection

We are concerned that geographical indication protection exceeds the level of protection provided under other international treaties. Therefore, we do not support Article 11(1).

3. Article 12 Protection Against Becoming Generic

We have a concern on the complexity that would result by prohibiting the public, all of a sudden, from using generic terms. Therefore we propose to add the phrase “and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met”.

4. Article 13(1) Prior Trademark Rights

Option B appears to be in line with the TRIPs Agreement’s general principle of “first come, first served” regarding the relationship between trademarks and geographical indications. In addition, Option A is too subjective and unclear.

The Republic of Korea hopes the pending issues regarding the revision of the Lisbon Agreement on Appellations of Origin and their International Registration including procedural matters could be discussed in a reasonable way and got a consensus based on a possible conclusion from the Diplomatic Conference in May 2015. The Republic of Korea reserves its rights to make further comments on the other issues not addressed in this document.

[Annex VI follows]

RUSSIAN FEDERATION**Submission of ROSPATENT regarding Article 7, paragraph 5 of the Basic Proposal for the New Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (Document LI/DC/3)**

Regarding paragraph 5 of Article 7 «Fees» of the Basic Proposal for the New Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (Document LI/DC/3), we suggest the following:

1. In Alternative A, Item (b), after the words "individual fee" to add the words "to cover the costs of substantive examination of the international registration or renewal of the international registration", and after the word "protection" to add the words "or renewal of protection".

2. In Alternative B:

- in Item (a) after the word "registrations" to add the words "and renewal of international registrations";

- in Item (b) after the words "individual fee" to add the words "to cover the costs of substantive examination of the international registration or renewal of the international registration", and after the word "protection" to add the words "or renewal of protection".

Alternative A and Alternative B of paragraph 5 of Article 7 «Fees», after incorporation of the above suggestions, will read (changes marked in italic):

ALTERNATIVE A

(a) Any Contracting Party may, in a declaration, notify the Director General that the protection resulting from international registration shall extend to it only if a fee is paid to cover its cost of substantive examination of the international registration. The amount of such individual fee shall be indicated in the declaration and can be changed in further declarations. The said amount may not be higher than the equivalent of the amount required under the national or regional legislation of the Contracting Party diminished by the savings resulting from the international procedure. Additionally, the Contracting Party may, in a declaration, notify the Director General that protection resulting from the international registration shall be subject to maintenance or renewal requirements and fee payments.

(b) Non-payment of an individual fee *to cover the costs of substantive examination of the international registration or renewal of the international registration* shall have the effect that *protection or renewal of protection* is renounced in respect of the Contracting Party requiring the fee.

ALTERNATIVE B

(a) The Assembly may establish the possibility for Contracting Parties to adopt individual fees in order to cover the costs of substantive examination of international registrations *and renewal of international registrations*.

(b) Non-payment of an individual fee *to cover the costs of substantive examination of the international registration or renewal of the international registration* shall have the effect that *protection or renewal of protection* is renounced in respect of the Contracting Party requiring the fee.

[Annex VII follows]

THAILAND

Comments on issues identified as pending by the Working Group on the Development of the Lisbon System

Group A: Pending Issues Concerning the Procedures in Respect of Applications and International Registration

1. Implementation Aspects of Article 1(xiv)

Thailand's national legislation does not contain any reference to intergovernmental organizations. The application for national registration has to be filed by the beneficiaries or government on behalf of the beneficiaries as defined by Articles 7 and 8 of Geographical Indications Protection Act B.E. 2546 (2003).

2. The issue as to whether Rule 5(3) should be optional or mandatory

Thailand believes that Rule 5(3) should be mandatory to facilitate the international registration at the national level. The information about the link between a product and its geographical origin is a unique feature of a registered appellation of origin or a registered geographical indication and crucial to justify the grant of exclusive rights.

3. The issue of the inclusion of Rule 5(4) permitting a Contracting Party to require a declaration of intention to use in respect of a registered appellation of origin or a registered geographical indication

Thailand is of the view that a declaration of intention to use is not necessary for a registered appellation of origin or a registered geographical indication given the fact that, in most if not all cases, before seeking registration, an AO or a GI already exists and belongs to a group of well-organised producers with established reputation built on traditional production methods passed on to the present.

4. The issue of promoting transparency under Rule 5(5)(ii)

The protection can be in whole or in part. Rule 5(5) should remain optional. Decision should be left to the Contracting Party of Origin to indicate in the application form whether or not protection was not claimed for certain elements of the appellation of origin or the geographical indication.

Group B: Pending Issues Concerning the Scope of Protection

5. The various options in respect of Article 11(1)(a) and Article 11(3)

The term "evocation" is unfamiliar to law makers and enforcement agencies in Thailand. Adoption of this term can create legal uncertainty. Thailand is in favour of deletion of the term from the New Act. Broadly speaking, Thailand's GI law provides protection to registered geographical indications in a similar fashion as Option B of Article 11(1)(a) for example. Nevertheless, we feel that the proposed Options for Article 11(1)(a) and 11(3) are detailed and prescriptive making it difficult for a country that has not yet established jurisprudence in the area of enforcement to commit a specific formula.

6. The content of Article 12 concerning protection against acquiring a generic character

Thailand supports the removal of brackets around the phrase “be considered to have” and the deletion of the square bracketed phrase “and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met” from Article 12.

7. The content of Article 13(1) concerning safeguards in respect of prior trademark rights

Thailand supports Option A regarding coexistence of a later claimed geographical indication with earlier trademark rights.

Group C: Pending Issues Concerning Other Provisions Related to the Legal Effects of International Registrations

8. The content of Article 16(2) concerning negotiations following a refusal

Based on the understanding that nothing prevents Contracting Parties from initiating consultations with respect to the withdrawal of a refusal in the absence of Article 16(2) under the current Lisbon Agreement, Thailand would like to suggest deletion of Article 16(2).

9. The issue as to whether Article 19(1) should establish an exhaustive or a non-exhaustive list of grounds for invalidation

Thailand supports Option B with the addition of “inter alia” at the end of the first paragraph. The sentence therefore would read:

“The grounds on the basis of which a Contracting Party may pronounce invalidation, in part or in whole, of the effects of an international registration in its territory shall include inter alia: ...”

[Annex VIII follows]

TOGO**Proposals on issues identified as pending by the Working Group on the Development of the Lisbon System****Possible introduction of a maintenance fee**

Togo, as a developing country is not in favor of the introduction of such a fee, which would add to the expenses of filing.

Introduction of individual fees

Togo is in favor of Option B, which is more flexible for applicants from developing countries that are party to the Lisbon Agreement.

Issues relating, among others, to trans-border geographical areas of origin, safeguards in respect of prior trademark rights and the status of the applicant, etc.

Togo has no objections.

[Annex IX follows]

TUNISIA**Observations on issues that remained pending at the tenth session of the Working Group on the Development of the Lisbon System**

Before commenting on the pending issues, Tunisia confirms its support for the ongoing review process intended to improve the Lisbon Agreement in order to make the system more attractive for users and prospective new members while preserving the principles and objectives of the current Lisbon Agreement.

Accordingly, Tunisia welcomes the progress achieved by the Working Group on the draft new instrument, which covers both appellations of origin (AO) and geographical indications (GI) and allows for the possible accession by intergovernmental organizations. Furthermore, through its missions, which include the representation of Tunisia to international and regional bodies and to similar foreign industrial property organizations, INNORPI will spare no effort to actively contribute to the success of the work of the Diplomatic Conference in May 2015.

I. Issues as amended at the tenth session of the Working Group on the Development of the Lisbon System:

- (v) Article 7(3), Article 8(3), Article 24(3)(vi) and related provisions concerning the possible introduction of maintenance fees

Fees, especially maintenance fees for protection, are one of the main sources of division among countries. Some countries, like Tunisia, which protect geographical indications and appellations of origin through a *sui generis* system, make provision in their legislation for the payment of a single individual fee; other countries protect geographical indications and appellations of origin by trademark law that requires the payment of renewal fees for continued protection.

Furthermore, Article 7 of the revised Lisbon Agreement provides for a system of reduced fees for developing countries and least developed countries, while retaining the possibility of a renewal fee.

INNORPI is in favor of this alternative.

- (vi) The possible re-introduction of the provisions of the current Lisbon Agreement dealing with contributions of Lisbon Union members

As long as the protection of GI and AO according to the revised Lisbon Agreement is subject to the payment of fees, the contribution of Member States no longer has a *raison d'être*. Moreover, the Hague Agreement Concerning the International Registration of Industrial Designs and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks do not contain provisions governing contributions from Members, since protection under these treaties is dependent on the payment of the requisite fees.

INNORPI is not in favor of this draft proposal.

- (vii) Various options in respect of Article 11(1)(a) and Article 11(3)

Article 11(1)(a) provides a high level of protection for appellations of origin and geographical indications in all countries; that is why the brackets should be removed from Article 11(1)(a)(ii) and (iii).

Accordingly, Article 11(3) cannot replace Article 11(1)(a) in its entirety.

Hence, we propose that Article 11(3) apply only to Article 11(1)(a)(iii).

(viii) The content of Article 12 concerning protection against acquiring a generic character

Tunisia expresses its preference for:

1. The phrase "GI and AO are protected against acquiring a generic character". However, we can accept the expression "cannot become generic" rather than "be considered to have become generic".
2. Deleting the phrases "the denomination constituting" and "the indication constituting", since they are unnecessary.

INNORPI prefers the option which favors the non-acquisition of a generic character by a GI or AO.

(ix) The content of Article 13(1) concerning safeguards in respect of prior trademark rights Tunisia supports Option A of Article 13(1) and the phrase "taking into account", because it is more closely aligned with Tunisian law.

INNORPI is in favor of Option A of Article 13(1).

(x) The content of Article 16(2) concerning negotiations following a refusal

Article 16(2) indicates that negotiations could be possible following a decision of refusal.

INNORPI accepts the provisions of Article 16(2).

(xi) The content of Article 17 concerning the necessity for a phasing-out period

Tunisian legislation does not provide for a transition period to phase out the previous use of an AO or GI as a generic term in the territory of a Contracting Party.

This provision does not reflect Tunisian legislation, but because of its optional character, it does not raise practical difficulties.

INNORPI accepts the provisions of Article 17.

(xii) Whether Rule 5(3) should be optional or mandatory

Tunisia expresses its support for the mandatory character of indications of the quality and other characteristics of the product.

INNORPI is in favor of the mandatory character of Rule 5(3).

(xiii) Promoting transparency under Rule 5(5)(ii)

Since this provision is optional, it is acceptable.

INNORPI accepts Rule 5(5)(ii).

II. The questions as they appear in document LI/WG/DEV/10/2

(xiv) Implementation aspects of Article 1(xiv)

According to Tunisian law, the accession of intergovernmental organizations to the revised Lisbon Agreement poses no practical difficulties.

INNORPI accepts the accession of intergovernmental organizations to the revised Lisbon Agreement.

(xv) The content of Article 2(2) and Article 5(4) concerning trans-border geographical areas of origin

Tunisia expresses its preference for the removal of the brackets in Article 2(2), which refers to trans-border geographical areas, especially as Article 5(4) does not require a joint application for the international registration of a GI or AO where a trans-border geographical area exists.

INNORPI is in favor of the above option.

(xvi) Entitlement to file a request under Article 5(2)

The right to apply for international registration of a GI or AO by the competent authority in Tunisia is acceptable insofar as the AO and GI are public signs whose intellectual property title is inalienable and collective.

INNORPI accepts the right to file an application for international registration of a GI or AO by the competent authority.

(xvii) Article 7(5) and 7(6) and related provisions for the possible introduction of individual fees

Tunisia expresses its preference for Option A of Article 7(5), given that Tunisian law requires the payment of a single fee covering the cost of substantive examination. Moreover, appellations of origin and geographical indications are protected for an unlimited period. That is why the maintenance or renewal fees appear to be at odd with the logic of geographical indications and appellations of origin.

Similarly, additional financial obligations could have a dissuasive effect on rights holders, particularly small and medium-sized producers, especially in developing countries like Tunisia.

However, Article 7(3) of the revised Lisbon Agreement provides for a system of reduced fees for developing and least developed countries.

INNORPI is in favor of this alternative.

(xviii) The Draft Agreed Statement at footnote 1 to Article 11 and the relevant provisions
The coexistence of appellations of origin and homonymous geographical indications is not provided for in Tunisian legislation.

However, the footnote provides for the legislation of AO and homonymous GI under the national law of each Contracting Party. Therefore, it does not create an obligation for the Contracting Parties to grant protection to this type of AO and GI.

The footnote can therefore be maintained.

(xix) Whether Article 19(1) should set out an exhaustive or non-exhaustive list of the grounds for invalidation

Tunisia expresses its preference for Option B of Article 19(1), which would limit the grounds for invalidation to two, namely:

1. existence of a prior right under Article 13; and
2. non-compliance with the definition.

INNORPI is in favor of Option B of Article 19(1).

(xx) The inclusion of Rule 5(4) allowing a Contracting Party to require a declaration of intention to use in respect of a registered appellation of origin or a registered geographical indication

Tunisian legislation does not provide for an obligation to use protected AOs and GIs.

Moreover, a requirement of intention to use is moot under the revised Lisbon System, especially as grounds for invalidation do not include lack of use as a ground for refusal.

INNORPI is not in favor of the inclusion of Rule 5(4).

(xxi) The amount of the fees referred to in Rule 8(1)

Article 7(3) of the revised Lisbon Agreement envisaged a system of reduced fees for developing and least developed countries.

The amounts of these fees should be specified.

[Annex X follows]

UNITED STATES OF AMERICA (USA)**Submission by the United States of America on the Basic Proposal for a New Act of the Lisbon Agreement on Appellations of Origin and their International Registration⁷**

The United States of America appreciates this opportunity to submit comments on the Basic Proposal for a new Act of the Lisbon Agreement on Appellations of Origin and their International Registration. In our view, the goal of this revision effort should be to find ways to bridge the gaps between systems for protecting geographical indications (GIs) while respecting the differences in national approaches and national priorities, in order to allow a broad range of countries to accede to the agreement. We offer the following submission to advance the important dialog that is taking place at the World Intellectual Property Organization, and which provides a historic opportunity to establish an inclusive international framework for the protection of GIs.

In its current form, unfortunately, the Basic Proposal is not consistent with national GI systems that do not operate like appellation of origin systems, limiting the number of countries who could accede to the new Act. The most effective way to ensure that the goal of bridging the different GI systems is accomplished is to allow all WIPO members to participate fully and equally in the May 2015 Diplomatic Conference. This would require that all WIPO members are considered “member delegations” under Rule 2 of the draft Rules of Procedure, LI/DC/2 Prov., with the ability to propose amendments, raise points of order, serve on the various committees and working groups, and to vote. WIPO and its membership – as well as producers and other parties with an interest in the Lisbon Agreement – will be better served by an open diplomatic conference that produces a widely accepted international instrument for the protection of GIs.

To achieve such an instrument, three fundamental principles should be respected in the text: 1) territoriality; 2) due process; and 3) GIs as private rights. This means that countries should have the ability to make their own determinations of protection of GIs rather than being bound by decisions made in other countries applying their own systems; that prior users in each country should have the opportunity to assert appropriate defenses; and that governments cannot take the place of private parties in prosecuting or enforcing rights in GIs. An agreement premised on governmental exchanges of individual GI applications or lists of GIs protected in the country of origin is likely to fall short of those fundamental principles.

With respect to the Lisbon Union’s stated goal of increasing membership, from a practical perspective, although these list exchanges may work well for those few economies with large numbers of notified GIs, it is difficult to see what incentive countries with very few notified GIs would have to accede to the new Act if changes are not made to the Basic Proposal. Under such a model, new contracting parties would have to examine all of the nearly 850 existing international registrations within 1-2 years, as well as examining any new applications filed into the system within 1 year, without any fees provided to cover the cost of processing those applications.

⁷ References to textual provisions are from WIPO documents LI/DC/3 and LI/DC/4, accessed at http://www.wipo.int/meetings/en/details.jsp?meeting_id=35202

In order to overcome these significant administrative and resource impacts, contracting parties should have the ability to process applications using existing national systems with appropriate fees. Our comments and suggested amendments are designed to facilitate that outcome and thus are not limited solely to those issues that the Lisbon Union considers as pending. We have also provided suggested amendments to the Basic Proposal and support for specific alternatives, which are set out in an APPENDIX to this document.

1st Principle: Territoriality

IP rights are territorial and created under the conditions set by national law. Reciprocal protection principles in early IP conventions have been replaced by the principle of national treatment. To the extent the Basic Proposal perpetuates the idea that receiving countries are merely “rubber stamping” the country of origin’s protection, the United States proposes amendments that would assist in increasing the attractiveness of the agreement for those countries, like the United States, that evaluate applications for IP rights consistent with domestic law and policy as well as national treatment obligations.

The following articles, rules, or alternatives provided in the Basic Proposal raise issues with respect to this principle, and we therefore discuss possible amendments and alternatives that would better align the Basic Proposal with the principle of territoriality. These proposed amendments are designed to give less evidentiary weight to the fact that a GI is protected in the country of origin and more weight to receiving country’s local consumer perception of the denomination or indication for purposes of evaluating registrability (Article 2 & Rule 5) and infringements (Article 11). Moreover, these amendments are designed to recognize and respect--instead of ignore--the facts on the ground of the receiving country when it comes to whether a term has been allowed by the foreign owner to become generic in another territory (Article 12 & Article 11 FN2).

Article 2 Subject Matter: Under Article 2, the definitions of appellations of origin and geographical indication – to the extent that they eliminate or otherwise read reputation in the receiving country out of the definition – create a presumption in the receiving country territory that a denomination or indication is a GI by virtue of protection in the country of origin.⁸ This presumption of GI protection is problematic because it shifts the burden to the receiving contracting party to prove the denomination/indication is not a GI. If reputation in the receiving country is essentially read out of the definition, then the only element to be examined by the receiving country is the quality “link” that has been recognized by the country of origin. There is nothing for the receiving country to evaluate independently, and therefore the grant of protection is but a “rubber stamp” of the country of origin’s analysis and thus, its protection. Such a rubber stamp does not serve either the receiving country’s IP rights holders or the goal of achieving an effective global registration system. Requiring reputation in the receiving country territory as a condition for protecting the GI would allow GIs to be considered as territorial private rights. We have inserted the reference to reputation in the appellation of origin definition in Article 2 in the Appendix.

Rule 5(3) Quality Link as Application Element: It should not be a mandatory application element for the applicant to provide evidence of the country of origin’s findings on the quality link in Rule 5(3), although it can be optional for contracting parties to require. Making such

⁸ Note 2.05 in WIPO document LI/DC/5 indicates that the reputation referred to in the definition of appellations of origin is that reputation in the country of origin.

evidence mandatory—i.e., the application will not be considered without such evidence--suggests that contracting parties must simply accept the findings of the country of origin without applying their own national law requirements with respect to quality. While country of origin determinations with respect to quality may be informative, they should not be determinative with respect to a receiving country’s determination regarding the quality element of specific applications. The United States supports Alternative C in Rule 5(3) with some minor amendments.

Article 11 Infringement: Article 11(1)(a)(i) creates a presumption of deception or confusion for use on goods of the same kind that do not meet the requirements for the protection. A legal presumption has a significant evidentiary impact, thereby reversing the burden of proof from applicants to other interested stakeholders, when it is presumed that a fact will be true so that proof of that fact is unnecessary. If there is no local reputation or even local use of a GI, there may be no deception by its use by another and there should not be an obligation to establish what would then be a false presumption under national law. If reputation in the receiving country were included as an element in both the appellation of origin definition and geographical indication definition in Article 2, this presumption of confusion/deception would be easier for national courts to apply. It is for that reason that we propose reinserting reputation as a potential optional element of the appellation of origin definition in Article 2.

When it comes to the application of Article 11(1)(a)(ii) or (iii) to possible infringements on goods that are not similar, applying an infringement standard of “misuse, imitation, or evocation” in Alternative A(ii) or “exploit unduly its reputation” in Alternative A(iii) leaves GI owners’ rights—and affected third parties—at the mercy of a national court’s to interpret these undefined and open-ended terms. These are legal standards unfamiliar to most WIPO members without appellation of origin systems because they are divorced entirely from consumer perception and traditional unfair competition principles that evaluate whether the consumer is, or likely to be, in some way harmed by the unfair actions. If there is no local reputation or local use, the consumer will not be harmed by use of the foreign GI by a third party. Thus, the infringement standards in Article 11(1)(a) Alternative A are impossible for many potential contracting parties to apply.

The United States also has some concerns with Article 11(1)(a) Alternative B because, without reputation or use, it is unclear how this standard, which is derived from the well-known mark provisions of the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights, would be applied. Again, evaluating infringements of well-known marks on dissimilar goods requires an analysis of whether the relevant consumer would likely perceive a confusion, association or connection between the two uses. That analysis turns on how strong the source identifier is in the minds of the local consumer. The reputation in the country of origin is not relevant to evaluating the consumer perception in the receiving country unless that reputation reaches into the receiving country’s market and influences purchasing decisions there. For GIs that do not rise to a certain level of reputation in the receiving country, it will be difficult for national courts to apply a well-known mark standard to foreign GIs that are entirely unknown or used in the territory.

Nonetheless, in light of all the alternatives available, the United States supports Article 11(1)(a) Alternative B because at least the infringement standard in this alternative for goods that are not similar would allow national courts to take into account local consumer perception with evidence that the consumer is confused in some way by the use of the

registered GI by someone other than the registrant. Because of our concern regarding what would be a false evidentiary presumption in Article 11(1)(a)(i), where there is no reputation in the receiving country, we would propose that Alternative B represent the infringement standard for same goods as well as goods not of the same kind.

Article 11 Footnote 2: Article 11’s infringement standards are so broad as to make it possible to rehabilitate generic terms, that is, to find infringement of a compound GI where only the generic component is used on the theory that use of the generic component brings to mind or evokes the entirety of the compound GI. The United States supports the second sentence in Article 11 FN2 to provide clarity on this matter when a generic term is included in a compound GI, which reads: “For greater certainty, a finding of infringement under this article cannot be based on the component that has a generic character.”

Article 12 Prohibition on Becoming Generic: The United States does not support Article 12. If a term is generic as a matter of fact in a contracting party, then it should be able to be considered generic as a matter of law. Article 12 is in tension with the principle of territoriality because it suggests that the country of origin protection should dictate protection in all Lisbon countries, even if the facts on the ground suggest that the term has become generic. Article 12 dictates that the GI presumption—a GI protected in the country of origin is a GI everywhere unless proved generic at the time of registration--has become conclusive and can no longer be rebutted even if the conditions in the receiving country change over time.

Article 12 also prevents contracting parties from being able to require use of the GI in commerce as a condition to maintain the right or require appropriate enforcement action against unauthorized parties. To provide flexibility for trademark systems or GI systems that require use and enforcement of the GI as a condition of continued protection, if Article 12 remains, the bracketed text at the end of the paragraph that reads “and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met” must be retained. Moreover, we also support retaining the bracketed text in Article 12-- “[the denomination constituting]” and “[the indication constituting]”—to make it clear that whether or not a denomination/indication is a GI is a question of national law and the factual situation in a contracting party, although we have some drafting suggestions to make this provision more logically constructed. These denominations/indications are not protected “appellation of origins” or “geographical indications” until these signs meet whatever national law requirements are required to be considered a protectable private property right in that territory.

Rule 5(5) Transparency: The United States supports Alternative A of Rule 5(5) requiring the application to indicate whether the instrument of protection in the country of origin does not protect a generic term in a compound GI apart from the GI as a whole. Inclusion of this information facilitates contracting parties’ determining how to treat the generic component in their respective territories and promotes transparency within the system.

2nd Principle: Due Process

The text contemplates that foreign governments must be considered to be applicants or “interested parties” in the application, examination, appeal and enforcement of their GIs in another contracting party’s territory. If a government or governmental entity is the owner of

the GI, then that government is an interested party. But if the country of origin government is solely acting as the GI registration entity, it is not an interested party in the acquisition and enforcement of private property rights in another country. We have concerns that the incentive to guarantee due process for the applicant and for interested third parties may be compromised when governments are negotiating GI protection for their nationals in a foreign country. Governments often have asymmetrical bargaining power *vis-à-vis* non-governmental applicants, particularly where those applicants are individuals or small-to-medium sized enterprises. There is a significant likelihood that such asymmetries will negatively affect the extent to which due process is available and effective.

The text problematically encourages negotiation between governments and points the way to negotiated outcomes where existing interested third party rights or uses can be ignored in favor of the foreign government’s demand for GI protection. For example, if a term is generic in one market, that market’s competent authority should be free to refuse the notified Lisbon term; however, the existing text appears to encourage that authority to accept the GI notification anyway and phase out those prior generic uses, *ex officio*, under Article 17. The same is true with respect to any prior trademark rights on a market. The text encourages governments to ignore those prior trademark rights and protect the GI anyway, for the benefit of the foreign GI owner, under Article 13. Moreover, if a notified Lisbon term is refused, a foreign government has the ability to request negotiations to withdraw that refusal under Article 16(2). To delete these three provisions would not change the obligations in the text, as they are essentially permissive. But to leave them in the text gives the impression that all other rights or uses should make way for the foreign GI, and the receiving country government is encouraged to do just that.

The following amendments or indications of support for alternatives in the Basic Proposal are designed to better respect the due process rights of prior users or prior right holders in receiving countries. These proposed amendments eliminate the suggestion in the text that prior uses in a receiving country are somehow illegitimate—and should be phased out—prior to the decision to protect a conflicting foreign GI (Article 17). They give full effect to the constitutional rights of third parties, where they exist, to request domestic invalidation an international registration for any ground available under national law (Article 19) and give prior trademark owners their full exclusive rights to prevent confusing uses of later conflicting GIs, to the extent allowed under national law (Article 13).

Article 17 Phase Out of Prior Uses: Article 17 suggests that a receiving country should consider phasing out, without any opportunity for challenge, any prior local uses of terms, generic words or trademarks that may conflict with a later notified foreign denomination/indication. Article 17 should be deleted entirely so as to give freedom to contracting parties to apply their own national laws and to avoid suggesting that legitimate prior uses in a territory somehow become illegitimate or should otherwise be terminated without any recourse to any defenses once a foreign GI is protected under the agreement.

Article 19 Invalidation: If Article 11’s overly broad standard for infringement remains in the text, it is critical that the possibility of an invalidation action in Article 19 of the Basic Proposal be available for interested parties that are facing abusive litigation tactics such as cease and desist letters or court actions containing an overly broad claim of rights. The United States supports Alternative A, which leaves the possible grounds for invalidation to national law but specifically notes the necessity of prior right owners to be able to raise, as a defense to a claim of GI infringement, that their prior rights must be given priority and

exclusivity, and then to be able to counterclaim for invalidation of the effects of the GI registration.

Article 13(1) Prior Trademark Rights: The United States strongly objects to the text of Option A in Article 13(1). Option A fundamentally diminishes the scope of trademark protection. In particular, Option A suggests that coexistence is the only appropriate outcome in every case of a trademark/GI conflict. We believe that mandatory coexistence unduly strains notions of territoriality and due process.

This delegation supports Option B of Article 13(1).

3rd Principle: GIs as Private Property

Note 6.02 of LI/DC/5 highlights a significant, but problematic, feature of the Lisbon System: “international registrations under the Lisbon System do not specify the holder of the registration...” In other words, the Lisbon System for the international registration of a type of private property rights does not identify the holder/owner of the property. This is problematic for several reasons, but most notably because the holder of a registration title is generally recognized as having the legal standing in national courts and thus the ability to bring a claim of infringement on the basis of those registration rights. Beneficiaries may not have standing to bring that same claim, depending on the facts of the case. A competent authority—a GI registration authority—is even less likely to have standing to bring a claim of infringement in national courts because it is not likely to be the owner. This reality is clearly recognized in Article 19(2) wherein the beneficiaries and the legal entity are granted the ability to defend their rights in an invalidation proceeding, but not the competent authority.

If no owner is identified in the international registration, receiving country GI systems could be required to permit non-owners to assert registration rights. Because legal standing in U.S. federal courts is a jurisdictional requirement that cannot be automatically conferred by Congress, this would be a difficult, if not impossible, task. While we appreciate the creation of a declaration option in Rule 5(4)(a) as a possible way to address the problem of inability to statutorily convey standing to non-owners, another would be to identify the holder as the entity in whose name the protection in the country of origin is granted.⁹

The following discussion offers solutions to the problems with the existing model whereby the government is authorized to operate as a proxy for the owner and otherwise negotiates protection in foreign markets. The amendments propose to identify the holder of the international registration so as to allow accessions by GI systems around the world that are set up as private right systems (Article 5). Alternatively, we offer amendments to create a declaration option that would allow contracting parties to require the holder to be identified as the applicant (Rule 5(4)(a)) as well as a declaration option for those countries that require the applicant to have an intention to use the GI in the receiving country territory as a condition for protection (Rule 5(4)(b)). Recognition of GIs as private rights demands deletion of Article 16(2) to eliminate the suggestion that a Contracting Party itself must be considered an interested party in what is an *ex parte* application process between the applicant and the competent authority in the receiving country. Moving away from the public right model

⁹ This would seemingly also solve the problem identified by the delegation of Peru of the regional Andean legislation not contemplating applications filed by intergovernmental organizations in paragraph 18 of LI/WG/DEV/10/7 prov as well as paragraph 41 of LI/WG/DEV/9/8 prov.

highlights the need to also eliminate the financial subsidization that the contracting party governments of the Lisbon Union have historically enjoyed to fund the operations of the System. The holders that benefit from using the Lisbon System are the ones who should pay for the costs of obtaining protection rather than WIPO, other more widely accepted registration systems, or foreign governments (Article 7, Article 24, Article 29).¹⁰

Article 5(2) Entitlement to File: The Competent Authority identified in Article 5 is not merely the intermediary that transmits the international application to the IB but it is actually the applicant filing as a proxy for, or on behalf of, the beneficiaries. However, Note 6.02 of LI/DC/5 suggests that no holder will be identified in any international registration.

Article 5(3) provides a declaration option for those contracting parties of origin to allow beneficiaries or legal entities representing the beneficiaries to file the international application directly with the IB. This construction provides flexibility at the application filing stage for a country of origin's national system that recognizes GIs as private rights. However, it does not solve the problem for those countries that recognize GIs as private rights who will receive notifications of international registrations without a holder named.

In the United States, geographic source identifiers can be protected as different types of marks in order to accommodate different GI ownership structures around the world. If the GI is protected as a trademark, the owner is the collective or licensor. If it is protected as a collective mark, the owner is the producer group. If it is protected as a certification mark, the owner is the certifier. The State or the Competent Authority can be the owner of the mark/GI if it is controlling the use of the mark by others. So it is possible for any of the entities listed in Article 5(2) to be both the applicant and the owner, but that will depend on the facts in that particular case. However, in the United States, the holder of the international registration must be identified and the applicant must be the owner. This will ensure the holder's ability to bring an infringement action in national courts on the registration.

We would strongly urge amendment to Article 5 so that the applicant is specifically named. We would suggest that the applicant be named as the entity in whose name the protection is granted in the Contracting Party of origin. This will generally be a beneficiary group, but it could be a governmental entity. This amendment will clarify who is entitled to bring enforcement action. Whether other interested parties have legal standing to bring a particular type of claim should be left to national law.

Rule 5(4) Intention to Use & Applicant Must Be the Owner: Rule 5(4) provides a declaration option for potential contracting parties to limit the applicant identified in Article 5(2) to only the owner of the appellation of origin or geographical indication. In the United States, that applicant--or one properly authorized to sign on behalf of the applicant--must sign the application as well as a declaration of bona fide intention to use the mark (i.e., the appellation of origin or geographical indication). That applicant (or properly authorized party) must also indicate that he is entitled to use the mark or is entitled to exercise legitimate control over the use of the mark in commerce by others.¹¹ These two features of the U.S. trademark system are designed, *inter alia*, to combat bad-faith applications.

¹⁰ See intervention of the Delegation of Bulgaria in paragraph 181 of LI/WG/DEV/10/7 prov.

¹¹ The United States requires, for applications filed via the Madrid Protocol and Paris Convention, a declaration that the applicant has a bona fide intention to use the mark in commerce that can be

Rule 5(4)(a) reflects the need of some countries for the applicant to be the owner and to sign the application. Rule 5(4)(b) gives the option to applicants to elect not to pursue an application in the United States, or another country that requires use, by not submitting the declaration of intention to use (or to exercise control over the use by others), thereby renouncing protection in the territory of the United States or elsewhere.

Because these are two independent requirements, we propose to create two separate declaration options in Rule 5(4): 1) owner signature on the application; and 2) intention to use.

Article 16(2) Governmental Negotiations: Article 16(2) identifies a *Contracting Party* as an interested party for purposes of negotiating a withdrawal of a refusal to protect a notified denomination/indication. This is problematic for those countries, like the United States, that have limits on who can be party to a dispute. Again, we understand that the provision is permissive, but we do think it sends a conflicting message about who has legal standing to assert rights in a GI.

As noted previously, Article 19(2) acknowledges that the beneficiaries and the legal entity representing the rights of the beneficiaries have enough of a legitimate interest in the property that they should be given the ability to contest an invalidation action at the national level. However, the Competent Authority or the Contracting Party itself is not acknowledged as having the same interest. Yet Article 16(2) is attempting to create such an interest at the refusal stage.

The Competent Authority, which is typically not the owner of the GI, would not likely be recognized by national courts in an invalidation proceeding as an interested party. If the text recognizes that national laws do not give legal standing to a competent authority to become a party to an invalidation proceeding in another contracting party, it seems contradictory to bestow upon a Contracting Party the legal standing to intervene in what should be an *ex parte* application process for GI recognition under Article 16(2) or an *inter partes* opposition or cancellation proceeding between two private parties.

Fees & Financial Self-Sustainability: Because GIs are private property rights, the Lisbon Union should not continue to rely on other WIPO members and other more widely-adopted WIPO registration systems to subsidize the acquisition of these rights. The Lisbon System must be financially self-sustaining.

controlled by the United States Congress. The declaration must include a statement that the person making the declaration believes the applicant to be entitled to use the mark in commerce (for trademarks) or is entitled to exercise legitimate control over the use in commerce by its members (collective mark) or by others (certification mark); and that to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive. 15 U.S.C. §1141(5).

The declaration must be signed by: (1) a person with legal authority to bind the applicant; (2) a person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the applicant; or (3) an attorney authorized to practice before the USPTO under 37 C.F.R. §11.14 who has an actual written or verbal power of attorney or an implied power of attorney from the applicant. 37 C.F.R. §§2.33(a) and 2.193(e)(1).

While we appreciate that the Lisbon Union hopes that new accessions will contribute to an increase in revenue, we do not believe that the text creates the requisite flexibilities for enough new contracting parties to accede to generate fees sufficient to fund the operations of the system. But even if that conclusion proves to be in error, the text of the agreement needs to provide for a way to balance expenses with revenue. There are essentially four different fee-related issues: 1) collecting national individual fees; 2) increasing the basic international application fee; 3) establishing a maintenance fee, mandatory or *ad hoc*; and 4) establishing a contracting party contribution system.

1. Collecting individual fees - including maintenance/renewal fees - at the national level

Article 7(5) Individual Fees: The United States supports Article 7(5) Option A which allows a prospective contracting party to make a declaration upon accession indicating that it wishes to collect "individual fees" at the national level to cover the costs of substantive examination of the international registration. Also, a contracting party may indicate that the international registration shall be subject to maintenance or renewal requirements and fee payments. Non-payment of the individual fee to a particular contracting party means that protection is "renounced" as to that contracting party.

The United States opposes Article 7(5) Option B which provides that the Lisbon Assembly can decide later whether the regulations should be established that would allow contracting parties to collect individual fees to cover the costs of substantive examination. The ability to collect an individual fee is a fundamental issue for many prospective contracting parties that must be available before accession can be contemplated.

Article 29(4) & Rule 9(1)(b) International Registrations Effected Prior to Accession: We also support the incorporation by reference of the terms of Article 7(5) in Article 29(4) which would allow new contracting parties to charge an individual fee to process already registered international registrations under the Act and renounce protection for non-payment. It would be quite a burden for newly acceding countries to have to accept the prior registered appellations of origin and geographical indications with no fees to fund their required expedited examination within 12 months of entry into force under the terms of Article 29(4). We acknowledge that Article 29(4) provides for an extension of time as defined in Rule 9(1) to refuse the existing appellations of origin and geographical indications on the Register of the New Act; Rule 9(1)(b) provides an extra year to evaluate the existing registrations. Depending on the number of registrations under the new Act that exist prior to accession by a new contracting party, we are concerned that two years total is insufficient to properly evaluate these existing registrations on top of the stream of new international registrations from newly acceding contracting parties. We would propose an additional two or more years for processing the existing international registrations under Rule 9(1)(b).

Article 29(4) International Registrations Effected Prior to Accession: We also propose amending Article 29(4) to make it clear that there is an option for acceding States and intergovernmental organizations to specify, in a declaration, that their national laws require the payment of an individual fee, and that no previously registered international registration would be considered for protection in that Contracting Party until that fee had been paid. In such an instance, for purposes of that Contracting Party the effective date of the international registration should be the date the individual fee has been paid.

Article 6(5) Effective Date for Existing International Registrations: Additionally, for the sake of clarity, the United States proposes an amendment to Article 6(5) to insert a new subparagraph (b) that specifies that in the case of Article 29(4), the effective date of the international registration in a newly acceding contracting party shall be the date of entry into force, or, if applicable, the date specified in the declaration under what would be the new Article 6(5)(c). The reference in Article 29(4) to the date of application of any existing international registrations is not particularly clear and does not appear to contemplate the application of the declaration provision of the existing Article 6(5)(b).

2. Increasing the International Application Fee

Article 24(4) Fixing of Fees & Rule 8(1) Amount of Fees: The United States supports the text of Article 24(4) which would require the fees to be set at a level that would allow the revenue of the System to cover the expenses, without the need for contributions from contracting parties. For the fees to cover expenses, the application fee of 500 Swiss Francs listed in Rule 8(1) would have to be increased substantially, beyond that proposed by the Director General of 1000 Swiss Francs. The United States requests an estimate from the Secretariat for what those amounts should be for the next biennium.

3. Establishing a maintenance fee for the International Registration

Article 7(3) & 24(3)(ii) Maintenance Fee: The United States strongly supports the provision in Alternative A of Article 7(3) and Article 24(3)(ii) to establish a mandatory maintenance fee to spread the cost recovery over the life of the international registration. Making the maintenance fee mandatory would ensure a relatively reliable income stream that will sustain the System over the longer term. A one-time application fee does not create a sustainable revenue source to cover administration of the System, including any information technology related costs. An ad hoc maintenance fee--to be paid by holders of international registrations when fee collections are down and do not cover expenses as required by Article 24(4)—raises difficult notice concerns as well as budgeting concerns for holders and would likely result in unintended cancellations of international registrations. Moreover, the costs of administering an *ad hoc* system would likely be higher than the costs of a regularized maintenance fee requirement. We propose some additional wording to Alternative A of Article 7(3) as noted in the red line section below.

Article 8(3) Effect of Non-Payment of a Maintenance Fee: This delegation supports Article 8(3) whereby the international registration will be cancelled as a consequence of non-payment of the maintenance fee.

4. Funding Through Contributions

Article 24(3)(vi) Sourcing of Financing of the Budget - Contributions: While we are open to the idea of requiring contributions from the contracting parties to cover any deficit created under Article 24(3)(vi), we are skeptical that contracting parties would be asked by the Lisbon Union to cover the deficit as the Union has never requested the existing contracting parties under the current Lisbon Agreement to fund the ever-increasing deficit. We therefore do not think that contributions are a reliable income stream for the System and thus, would only support retaining Article 24(3)(vi) in the text as necessary to deal with exceptional circumstances or projects where fees do not cover expenses of the System.

If contributions are retained in the text, we would suggest an amendment to Article 24(3)(vi) to add specifics as to when the need for contributions should be assessed and what level of contributions should be expected from different contracting parties. This amendment should make the provision simpler to implement. This amendment would be in lieu of the bracketed text in Article 24(5) which provides for contributions by class of Paris Convention member.

APPENDIX

The following references to the text of the Basic Proposal are included in order to identify the amendments or alternative provisions that the United States believes are necessary to align the text with the basic principles of 1) territoriality; 2) due process; and 3) GIs as private rights. Adhering to these principles will make it possible for more WIPO members to consider joining the system.

Article 2 Subject Matter: To provide for definitional element of reputation in the receiving country as a condition for a denomination or indication to be considered eligible subject matter for GI protection, the United States proposes the following amendment to Article 2.

Article 2

- (1) *[Appellations of Origin and Geographical Indications]* This Act applies in respect of:
- (i) any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the reputation, quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation; as well as
 - (ii) any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
-

Article 5 Entitlement to File: The delegation of the United States proposes that Article 5 should be amended to identify that the holder of the international registration is the entity in whose name the protection stands in the country of origin.

Article 5

- (2) *[Application Filed by Competent Authority]* ~~Subject to paragraph (3), the application for the international registration of an appellation of origin or a geographical indication shall be filed, through the intermediary of the Competent Authority, by the entity in whose name such protection stands in the Contracting Party of Origin, provided that the applicant is a national of, domiciled in, or has a real and effective commercial establishment in that Contracting Party. Competent Authority in the name of:~~
- ~~———— (i) — the beneficiaries; or~~
 - ~~———— (ii) — a legal entity which has legal standing to assert the rights of the beneficiaries or other rights in the appellation of origin or the geographical indication, such~~

as, for instance, a federation or association representing the beneficiaries, or a group of producers representing them, whatever its composition and regardless of the legal form in which it presents itself.

~~(3) — [Application Filed Directly by the Beneficiaries or a Legal Entity] (a) If the legislation of the Contracting Party of Origin so permits, the application may be filed by the beneficiaries or by the legal entity referred to in paragraph (2)(ii).~~

~~(b) — Subparagraph (a) applies subject to a declaration from the Contracting Party that its legislation so permits. Such declaration may be made by the Contracting Party at the time of deposit of its instrument of ratification or accession or at any later time. Where the declaration is made at the time of the deposit of its instrument of ratification or accession, it shall take effect upon the entry into force of this Act with respect to that Contracting Party. Where the declaration is made after the entry into force of this Act with respect to the Contracting Party, it shall take effect three months after the date on which the Director General has received the declaration.~~

Article 6(5) Date of Effect of International Registration: The United States proposes an amendment to Article 6(5) to insert a new subparagraph (b) that specifies that in the case of Article 29(4), the effective date of the international registration in a newly acceding Contracting Party shall be the date of entry into force, or, if applicable, the date specified in the declaration under what would be the new Article 6(5)(c).

Article 6

(5) *[Date of Effect of International Registration]* (a) Subject to subparagraph (b), a registered appellation of origin or geographical indication shall, in each Contracting Party that has not refused protection in accordance with Article 15, or that has sent to the International Bureau a notification of grant of protection in accordance with Article 18, be protected from the date of the international registration.

(b) In the case of Article 29(4), the effective date of the international registration in a newly acceding Contracting Party shall be the date of entry into force in that territory, subject to any declaration made in subparagraph (c).

~~(bc)~~ A Contracting Party may, in a declaration, notify the Director General that, in accordance with its national or regional legislation, a registered appellation of origin or geographical indication is protected from a date that is mentioned in the declaration, which date shall however not be later than the date of expiry of the time limit for refusal specified in the Regulations in accordance with Article 15(1)(a).

Article 7 Maintenance Fee: The United States supports Alternative A in Article 7(3) with the following proposed amendment.

Article 7

ALTERNATIVE A

(3) *[Maintenance Fee]* The Assembly shall establish a fee to be paid for the maintenance of each international registration, at a level determined by the extent to which receipts from the sources indicated in Article 24(3)(i) and (iii) to (v) do not suffice to cover the expenses of the Special Union. The Regulations may specify the maintenance fees to be paid, and the timing of such fees. For previously registered appellations of origin, such maintenance fee shall be required to be paid within one year of the New Act going into force, and if not paid, the international registration shall be deemed canceled. The regulations may also provide for grace periods for the late payment of maintenance fees. These fees shall be required to be reviewed by the Assembly each biennium.

Article 7(5) Individual Fee: The United States supports Alternative A of Article 7(5).

Article 7(5)

(5) *[Individual Fee]*

ALTERNATIVE A

(a) Any Contracting Party may, in a declaration, notify the Director General that the protection resulting from international registration shall extend to it only if a fee is paid to cover its cost of substantive examination of the international registration. The amount of such individual fee shall be indicated in the declaration and can be changed in further declarations. The said amount may not be higher than the equivalent of the amount required under the national or regional legislation of the Contracting Party diminished by the savings resulting from the international procedure. Additionally, the Contracting Party may, in a declaration, notify the Director General that protection resulting from the international registration shall be subject to maintenance or renewal requirements and fee payments.

(b) Non-payment of an individual fee shall have the effect that protection is renounced in respect of the Contracting Party requiring the fee.

Article 8(3) Effect of Non-Payment of a Maintenance Fee: The United States supports the establishment of a mandatory maintenance fee and this provision which provides for cancellation of the international registration for failure to pay the fee.

Article 8(3)

[(3) *[Effect of Non-Payment of a Maintenance Fee]* Notwithstanding paragraph (1), an international registration shall be cancelled if the fee referred to in Article 7(3) is not paid.]

Article 11 Protection: The United States supports Alternative B in Article 11(1)(a)(ii) although we propose to further extend the coverage of Alternative B to replace Article 11(1)(a)(i) as well as (ii).

Article 11

ALTERNATIVE B

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

ALTERNATIVE B

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

Article 11 Footnote 2: The United States supports retaining Article 11 FN2, particularly the second sentence, to provide clarity on the interpretation that must be given when national courts are attempting to apply Article 11’s overly broad infringement standard to a compound GI that contains a generic term.

[¹ Where certain elements of the denomination or indication constituting the appellation of origin or geographical indication have a generic character in the Contracting Party of Origin, their protection under this subparagraph shall not be required in the other Contracting Parties. For greater certainty, a refusal or invalidation of a trademark, or a finding of infringement, in the Contracting Parties under the terms of Article 11 cannot be based on the component that has a generic character.]

Article 12 Generic: The United States supports the deletion of Article 12 entirely. If not agreed to, the United States supports retaining all of the bracketed text, although we propose moving the bracketed text “the denomination constituting” and “the indication constituting” to an earlier point in the text to make the text read more logically.

Article 12

Subject to the provisions of this Act, the denomination constituting a registered appellations of origin and or the indication constituting a registered geographical indications cannot [be considered to have] become generic as long as [~~the denomination constituting~~] the appellation of origin, or [~~the indication constituting~~] the geographical indication, is protected in the Contracting Party of Origin [and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met].

Article 13(1) Prior Trademark Rights: The United States supports Alternative B of Article 13(1).

Article 13(1)

ALTERNATIVE B

the protection of that appellation of origin or geographical indication in that Contracting Party shall be subject to the rights conferred by the prior trademark under national or regional law along with any applicable exceptions to those rights.

Article 16 Negotiations: The United States proposes the deletion of Article 16(2) as it sends the wrong message about who should be granted legal standing to assert ownership rights in a GI.

Article 16

~~[(2) *[Negotiations]* Where appropriate and without prejudice to Article 15(5), the Contracting Party of Origin may propose negotiations with a Contracting Party in respect of which a refusal has been recorded, in order to have the refusal withdrawn.]~~

Article 17 Prior Use: The United States proposes to delete Article 17(1) entirely.

Article 17

~~[(1) *[Phasing Out of Prior Use]* (a) Where a denomination constituting a registered appellation of origin, or an indication constituting a registered geographical indication, was, prior to the date of the international registration, in use in a Contracting Party by a third party and is not safeguarded under Article 13, that Contracting Party may, when it does not refuse the protection of the appellation of origin or geographical indication, grant to the third party a defined period, as specified in the Regulations, to terminate such use.~~

~~(b) Where a Contracting Party has refused the effects of an international registration under Article 15 on the ground of prior use as referred to in subparagraph (a), it may similarly grant to the third party a defined period to terminate such use in case it decides to withdraw the refusal under Article 16 or notify a grant of protection under Article 18.~~

~~(c) The Contracting Party shall notify the International Bureau of any such period, in accordance with the procedures specified in the Regulations.]~~

Article 19 Invalidation: The United States supports Alternative A which leaves the possible grounds of invalidation to national law.

Article 19

ALTERNATIVE A

(1) [*Grounds for Invalidation*] The grounds on the basis of which a Contracting Party may pronounce invalidation, in part or in whole, of the effects of an international registration in its territory shall include:

ALTERNATIVE A

in particular, those based on a prior right, as referred to in Article 13.

Article 24 Budget: The United States supports a mandatory maintenance fee to help revenue cover the expenses of the Union, as contained in Article 24(3)(ii). The United States does not support relying on contributions from contracting parties to make up any deficit, but instead would prefer a maintenance fee for international registrations. We observe that the current Lisbon Agreement contains a contribution requirement but it has not been applied, even as the budget deficit has grown. If contributions are adopted, we would propose an amendment to Article 24(3)(vi) that includes a time period and guidance on how the contributions would be assessed so that this determination is simpler to implement.

Article 24(3)

(3) [*Sources of Financing of the Budget*] The budget of the Special Union shall be financed from the following sources:

- (i) fees collected under Article 7(1) and (2);
- [(ii) maintenance fees, as referred to in Article 7(3);]
- (iii) proceeds from the sale of, or royalties on, the publications of the

International Bureau concerning the Special Union;

- (iv) gifts, bequests, and subventions;
- (v) rents, interest, and other miscellaneous income;

[(vi) contributions of the Contracting Parties, if and to the extent to which receipts from the sources indicated in items (i) to (v) do not suffice to cover the expenses of the Special Union in a biennium, with the contributions of each Contracting Party being proportional to their relative number of registrations in the Lisbon System.].

Article 24(4) Fixing of Fees: The United States supports Article 24(4) to set the fees to cover expenses.

Article 24(4)

(4) [*Fixing of Fees; Level of the Budget*] (a) The amounts of the fees referred to in paragraph (3) shall be fixed by the Assembly on the proposal of the Director General [and shall be so fixed that the revenue of the Special Union should, under normal circumstances, be sufficient to cover the expenses of the International Bureau for maintaining the international registration service without requiring payments of the contributions referred to in paragraph (3)(vi)].

Article 29 International Registrations Effected Prior to Accession: The United States proposes that Article 29(4) be amended to provide the option for acceding States and intergovernmental organizations to specify, in a declaration, that their national laws require the payment of an individual fee, and that no previously registered international registration under this Act would be considered for protection in that Contracting Party until that fee had been paid.

Article 29

(4) [*International Registrations Effected Prior to Accession*] In the territory of the acceding State or intergovernmental organization, the benefits of this Act shall apply in respect of appellations of origin already registered under this Act at the time the accession becomes effective, subject to [Article 7(5) as well as] the provisions of Chapter IV, which shall apply *mutatis mutandis*. Acceding States and intergovernmental organizations may specify, in a declaration, that their national laws require the payment of an individual fee, and that no previously registered international registration would be considered for protection in that Contracting Party until that fee had been paid. In such an instance, for purposes of that Contracting Party the date of international registration shall be the date the individual fee has been paid.

~~However,~~ the acceding State or intergovernmental organization may also specify, in a declaration attached to its instrument of ratification or accession, an extension of the time limit referred to in Article 15(1), and the periods referred to in Article 17, in accordance with the procedures specified in the Regulations in that respect.

Rule 5(3) Application – Particulars Concerning the Quality, Reputation or

Characteristics: The United States supports Alternative C in Rule 5(3) but with the deletion of the reference in subparagraph (d) to Rule 16(2).

ALTERNATIVE C

(a) To the extent that a Contracting Party requires that, for the protection of a registered appellation of origin or geographical indication in its territory, the application further indicate particulars concerning, in the case of an appellation of origin, the quality or characteristics of the good and its connection with the geographical environment of the geographical area of production, and, in the case of a geographical indication, the quality, reputation or other characteristic of the good and its connection with the geographical area of origin, it shall notify that requirement to the Director General.

(b) In order to meet such a requirement, particulars as referred to in subparagraph (a) shall be provided in a working language, but they shall not be translated by the International Bureau.

(c) Non-compliance with the requirements under subparagraphs (a) and (b) shall have the effect of a renunciation of protection in respect of any Contracting Party having made the notification referred to in subparagraph (a).

(d) The Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) or the Competent Authority, may at any time withdraw such renunciation by presenting the required information, ~~subject to Rule 16(2).~~

Rule 5(4) Application - Signature and/or Intention to Use: The United States supports the concept in the text of Rule 5(4) but suggests some wording changes to more accurately reflect the needs of both trademark systems and sui generis GI systems that require an intention to use the GI in the territory. Also, the United States proposes an amendment to make two declaration options available, one for each element as the two may not necessarily be required together in a prospective contracting parties' GI system.

Rule 5

[(4) *Application – Signature and/or Intention to Use*] (a) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication ~~under its trademark law, the application be signed by the owner or the one entitled to use the appellation of origin or geographical indication and/or be accompanied by a declaration of intention to use the registered appellation of origin or geographical indication in its territory,~~ it shall notify that requirement to the Director General.

(b) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication the application be accompanied by a declaration of intention to use the registered appellation of origin or geographical indication in its territory or a declaration of intention to exercise control over the use by others of the registered appellation of origin or geographical indication in its territory, it shall notify that requirement to the Director General.

(c) An application that is not signed by the owner ~~or the one entitled to use the appellation of origin or geographical indication~~ and/or that is not accompanied by a declaration indicated in Rule 5(4)(b) of intention to use shall have the effect that protection is renounced in respect of the Contracting Party requiring such signature and/or such declaration, as notified under subparagraphs (a) and (b).]

Rule 5(5) Application – Protection Not Claimed for Certain Elements of the Appellation of Origin or the Geographical Indication: The United States supports Alternative A of Rule 5(5).

(5) *[Application – Protection Not Claimed for Certain Elements of the Appellation of Origin or the Geographical Indication]*

ALTERNATIVE A

The application shall indicate whether or not the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin, specifies that protection is not granted for certain elements of the appellation of origin or the geographical indication. Any such elements shall be indicated in the application in a working language.

Rule 8(1) Amount of Fees: The United States proposes increasing the amount of fees for international registration and other fees in Rule 8(1) to an amount that would cover expenses. The United States requests an estimate from the Secretariat for the level of fees necessary to cover estimated expenses for the next biennium.

Rule 8(1)

(1) *[Amount of Fees]* The International Bureau shall collect the following fees, payable in Swiss francs:

- | | |
|--|-------|
| (i) fee for international registration | [500] |
| (ii) fee for each modification of an international registration | [200] |
| (iii) fee for providing an extract from the International Register | [90] |
| (iv) fee for providing an attestation or any other written information concerning the contents of the International Register | [80] |
| [(v) individual fees as referred to in paragraph (2)] | |

Rule 9(1) Notification of Refusal of Existing International Registrations: The United States supports extending the time limit for newly acceding contracting parties to examine the existing registrations under this Act up to 3 years total.

Rule 9

(1) *[Notification to the International Bureau]* (a) A refusal shall be notified to the International Bureau by the Competent Authority of the concerned Contracting Party and shall be signed by that Competent Authority.

(b) The refusal shall be notified within a period of one year from the receipt of the notification of international registration under Article 6(4). In the case of Article 29(4), this time limit may be extended up to 3 ~~another~~ years.

[End of Annexes and of document]

LI/DC/8

May 11, 2015 (Original: English)

ADMISSION OF OBSERVER

prepared by the Secretariat

1. Since the meeting of the Preparatory Committee of the Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications, when the list of invitees to the Diplomatic Conference was approved (LI/R/PM/3 and LI/R/PM/6), the Director General has received a request from the following non-governmental organization (NGO) for admission to attend the Diplomatic Conference as an observer:

– Indigenous Peoples' Center for Documentation, Research and Information (DOCIP).

2. A short profile of the NGO mentioned in paragraph 1, above – its objectives, structure and membership – appears in the Annex of this document. It is proposed that the NGO mentioned in paragraph 1 be invited to the Diplomatic Conference as an “Observer”.

3. The Diplomatic Conference is invited to take a decision on the proposal appearing in paragraph 2, above.

[Annex follows]

Headquarters: DOCIP was created in 1978 at the request of the Indigenous delegations participating in the first international conference of non-governmental organizations on Indigenous issues held at the United Nations in 1977, and has its headquarters in Geneva, Switzerland.

Objectives: DOCIP’s principal objective is to contribute to the realization of the right to self-determination of indigenous peoples in two respects: the right to participate in decision-making at national and international levels; and the right to autonomy in their governance. It provides documentation, information and technical/secretariat support services to Indigenous Peoples during international conferences and negotiations so that they have the means to participate effectively, and coordinate with each other. DOCIP works to ensure that indigenous peoples and other stakeholders worldwide have access to information relevant to international procedures concerning the rights of indigenous peoples, as well as to provide indigenous peoples with the tools necessary to establish an effective dialogue with relevant authorities concerning their rights. Within the context of meetings of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, DOCIP offers, among its services, translation and interpretation to Indigenous communities and organizations in four languages.

Structure: DOCIP’s primary governing bodies consist of a Council and Committee, supported by a core staff, associates and a network of a large number of volunteers worldwide.

[End of Annex and of document]

LI/DC/9

May 11, 2015 (Original: English)

PROPOSAL BY THE DELEGATIONS OF ARGENTINA, AUSTRALIA, CANADA, CHILE, JAPAN, NEW ZEALAND, PANAMA, REPUBLIC OF KOREA, SAUDI ARABIA, SINGAPORE, UNITED STATES OF AMERICA AND URUGUAY

Proposal by the Delegations of Argentina, Australia, Canada, Chile, Japan, New Zealand, Panama, Republic of Korea, Saudi Arabia, Singapore, United States of America and Uruguay

1. In a communication dated May 8, 2015, the Delegations of Argentina, Australia, Canada, Chile, Japan, New Zealand, Panama, Republic of Korea, Saudi Arabia, Singapore, United States of America and Uruguay transmitted to the International Bureau of the World Intellectual Property Organization (WIPO) the proposal contained in the present document.

PROPOSAL TO IMPROVE THE DRAFT RULES OF PROCEDURE OF THE DIPLOMATIC CONFERENCE

2. The "Draft Rules of Procedure of the Diplomatic Conference" (document LI/DC/2 Prov.) for the Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement on Appellations of Origin and Their International Registration is noted. These draft Rules provide, in Rule 1(2) thereof, that the Conference, meeting in Plenary, shall be competent to adopt and make any amendments to the Rules of Procedure. Furthermore, the draft Rules (Rule 2) define the conference as consisting of Lisbon members, the African Intellectual Property Office, the European Union, WIPO members, members of the United Nations that are not WIPO members, and others that were invited to attend as observers. Rule 29 provides that Member Delegations may propose amendments to the basic proposal, but the draft Rules are silent as to who may propose amendments to the Rules of Procedure. It follows, then that all participants may propose amendments to the draft Rules. Rule 46 confirms that Observer Delegations and Observers may attend the plenary meetings of the Conference. Finally, Rule 34(1) provides that all decisions of all bodies shall be made as far as possible by consensus. We believe that this proposed amendment to the draft Rules of Procedure should achieve consensus approval in the Conference.

3. As explained in LI/R/PM/5/Rev.3 and as discussed in the Preparatory Committee, WIPO Diplomatic Conferences are normally open for full participation and voting by all WIPO Members. However, the current draft of document LI/DC/2 Prov. limits full participation and voting rights to only current Lisbon members, but allows two non-WIPO members to have more rights to negotiate than WIPO Members that are not Lisbon members. For the past 20 years, WIPO Diplomatic Conferences, including a Diplomatic Conference to adopt a new act of an existing treaty (the Hague Agreement), have allowed equal participation of all WIPO Members (see the Annex for excerpts from four recent Diplomatic Conferences).

4. To allow for full and equal participation by all WIPO Members, we continue to propose revising document LI/DC/2 Prov. as follows:

DRAFT RULES OF PROCEDURE OF THE DIPLOMATIC CONFERENCE

(a) Rule 2: Composition of the Conference

(1) The Conference shall consist of:

- (i) delegations of the States members of the World Intellectual Property Organization (hereinafter referred to as "the Member Delegations"),
- (ii) the delegations of the African Intellectual Property Organization and the European Union (hereinafter referred to as "the Special Delegations"),
- (iii) the delegations of States members of the United Nations which are not members of the World Intellectual Property Organization (hereinafter referred to as "the Observer Delegations") and
- (iv) representatives of intergovernmental and non-governmental organizations and others invited to the Conference as observers (hereinafter referred to as "the Observers").

(2) References in these Rules of Procedure to "Member Delegations" shall be considered, except as otherwise provided (see Rules 11(2), 33 and 34), as references also to the Special Delegations.

(3) References in these Rules of Procedure to "Delegations" shall be considered as references to the three kinds (Member, Special and Observer) of Delegations but not to Observers.

LI/DC/10
May 14, 2015 (Original: English)

FIRST REPORT OF THE CREDENTIALS COMMITTEE

Prepared by the Secretariat

1. The Credentials Committee (hereinafter referred to as “the Committee”), established on May 12, 2015, by the Diplomatic Conference for the Adoption of a new Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration, met on May 13, 2015.
2. The Delegations of the following States, elected members of the Committee by the Diplomatic Conference, attended the meeting: Burkina Faso, Czech Republic, Georgia, Nicaragua and Portugal.
3. The President of the Committee, elected by the Diplomatic Conference, was Mr. Filipe Ramalheira (Portugal). The Vice-Presidents, elected by the Diplomatic Conference, were Mr. Milan Beránek (Czech Republic) and Ms. Jenny Arana Vizcaya (Nicaragua).
4. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Conference on May 11, 2015 (document LI/DC/2 Prov., hereinafter referred to as “the Rules of Procedure”), the Committee examined the credentials, full powers, letters or other documents of appointment presented for the purposes of Rules 6 and 7 by delegations of States members of the Lisbon Union, participating in the Conference in accordance with Rule 2(1)(i) of the Rules of Procedure (hereinafter referred to as “Member Delegations”), and by the delegations of the African Intellectual Property Organization (OAPI) and the European Union participating in the Conference in accordance with Rule 2(1)(ii) of the Rules of Procedure (hereinafter referred to as the “Special Delegations”). It also examined the credentials, full powers, letters or other documents of appointment presented by delegations of States members of the World Intellectual Property Organization (hereinafter referred to as “WIPO”) which are not members of the Lisbon Union participating in the Conference in accordance with Rule 2(1)(iii) of the Rules of Procedure (hereinafter referred to as “Observer Delegations”) as well as by the representatives of intergovernmental and non-governmental organizations, participating in the Conference in accordance with Rule 2(1)(iv) of the Rules of Procedure (hereinafter referred to as “Observers”).
3. On the basis of the information provided by the Secretariat as to the practice prevailing in other diplomatic conferences and in particular in diplomatic conferences convened by WIPO, the Committee decided to recommend to the Conference, meeting in Plenary, that the following criteria should be applied by the Committee in its examination of, and should govern the decision of the Conference on, the credentials, full powers, letters or other documents presented for the purposes of Rules 6 and 7 of the Rules of Procedure:
 - (i) as far as any State is concerned, its delegation’s credentials and full powers should be accepted if they were signed by that State’s Head of State, Head of Government or Minister for Foreign Affairs; credentials, but not full

powers, should be accepted if they were contained in a note verbale or letter of that State's Permanent Representative in Geneva or in a note verbale of that State's Ministry of Foreign Affairs or its Permanent Mission in Geneva, and should not otherwise be accepted; in particular, a communication emanating from a Minister other than the Minister for Foreign Affairs, should not be treated as credentials;

- (ii) as far as any Organization is concerned, its representative's letter or other document of appointment should be accepted if it was signed by the Head (Director General, Secretary General or President) or Deputy Head or official responsible for external affairs of the Organization;
- (iii) facsimile and electronic communications or hard copies of originals should be accepted if, as to their source, the requirements stated in points (i) and (ii) were fulfilled.

4. Pending a final decision by the Conference, meeting in Plenary, on the said criteria, the Committee decided to apply those criteria to the documents received by it.

5. Accordingly, the Committee found in order

(a) as far as Member Delegations are concerned,

- (i) the credentials and full powers (that is, credentials for participating in the Conference and signing the final act, and full powers to also sign the treaty to be adopted by the Diplomatic Conference) of the delegations of the following (10) States:

Bosnia and Herzegovina
Burkina Faso
Congo
Democratic People's Republic of Korea
Hungary
Nicaragua
Peru
Portugal
The former Yugoslav Republic of
Macedonia
Togo

- (ii) the *credentials* (without *full powers*) of the delegations of the following (18) States:

Algeria
Bulgaria
Costa Rica
Cuba

Czech Republic
 France
 Gabon
 Georgia
 Haiti
 Iran (Republic Islamic of)
 Israel
 Italy
 Mexico
 Montenegro
 Republic of Moldova
 Serbia
 Slovakia
 Tunisia

(b) as far as the *Special Delegations* are concerned, the *credentials* of the delegations of the African Intellectual Property Organization (OAPI) and the European Union (2).

(c) as far as *Observer Delegations* are concerned,

(i) the credentials and full powers of the delegations of the following (2) States:

Mali
 Romania

(ii) the *credentials* (without *full powers*) of the delegations of the following (78) States:

Afghanistan	Jordan
Albania	Latvia
Argentina	Lithuania
Australia	Luxembourg
Austria	Madagascar
Barbados	Mauritania
Belarus	Morocco
Belgium	Mozambique
Benin	Myanmar
Brazil	Netherlands
Burundi	New Zealand
Cabo Verde	Niger
Cameroon	Norway
Canada	Oman
Chile	Pakistan
China	Panama
Colombia	Philippines
Côte d'Ivoire	Qatar
Croatia	Republic of Korea
Democratic Republic of the Congo	Romania
Denmark	Russian Federation
Dominican Republic	San Marino

Ecuador	Saudi Arabia
Egypt	Senegal
El Salvador	Singapore
Estonia	Slovenia
Ethiopia	Spain
Finland	Sri Lanka
Germany	Sweden
Ghana	Switzerland
Greece	Thailand
Guatemala	Turkmenistan
Guinea	Turkey
Honduras	Ukraine
India	United States of America
Indonesia	United Kingdom
Ireland	Uruguay
Jamaica	Viet Nam
Japan	Zimbabwe

(d) as far as the *Observers* are concerned, the *letters or documents of appointment* of representatives of the following Observers:

- (i) *intergovernmental organizations*: African Union (AU), Benelux Office for Intellectual Property (BOIP), Organisation internationale de la francophonie (OIF), South Center (SC), World Trade Organization (WTO) (5).
- (ii) *non-governmental organizations*: Association of European Trademark Owners (MARQUES), Brazilian Association of Intellectual Property (ABPI), Center for International Intellectual Property Studies (CEIPI), Consortium for Common Food Names (CCFN), European Law Students' Association (ELSA INTERNATIONAL), Health and Environment Program (HEP), Inter-American Association of Industrial Property (ASIPI), International Association for the Protection of Intellectual Property (AIPPI), International Center for Trade and Sustainable Development (ICSTD), International Federation of Intellectual Property Attorneys (FICPI), International Society for the Development of Intellectual Property (ADALPI), International Trademark Association (INTA), International Wine Law Association (AIDV), Knowledge Ecology International (KEI), Organisation for an International Geographical Indications Network (oriGIn) (15).

6. The Committee recommends to the Conference, meeting in Plenary, to accept the credentials and full powers of the delegations mentioned in paragraph (7)(a)(i) and 7(c)(i), above, the credentials of the delegations mentioned in paragraph 7(a)(ii), 7(b) and 7(c)(ii), above, and the letters or documents of appointment of the representatives of the organizations mentioned in paragraph 7(d), above.

7. The Committee expressed the wish that the Secretariat should bring Rules 6 (“Credentials and Full Powers”), 7 (“Letters of Appointment”) and 10 (“Provisional

Participation”) of the Rules of Procedure to the attention of Member Delegations or Observer Delegations not having presented credentials or full powers and of the representatives of Observers not having presented letters or other documents of appointment.

8. The Committee decided that a report on its meeting should be prepared by the Secretariat and issued as its report, to be presented by the President of the Committee to the Conference, meeting in Plenary.

9. The Committee decided that it would re-convene to examine any further communications concerning Member Delegations, the Special Delegations, Observer Delegations, or Observers which might be received by the Secretariat after the close of its meeting.

LI/DC/11

May 12, 2015 (Original: English)

ARTICLE 5

Proposal by the Delegation of Iran (Islamic Republic of)

The Delegation of Iran (Islamic Republic of) proposes the following amendment to Article 5(4).

Article 5
Application

(4) Possible Joint Application in the Case of a Trans-border Geographical Area] (a) In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may agree to (file) ~~act as a single Contracting Party of Origin by filing~~ an application jointly, through a commonly designated Competent Authority.

LI/DC/12
May 18, 2015 (Original: English)

SECOND REPORT OF THE CREDENTIALS COMMITTEE

prepared by the Secretariat

1. The Credentials Committee (hereinafter referred to as "the Committee"), established on May 12, 2015, by the Diplomatic Conference for the Adoption of a new Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration, met for the second time on May 15, 2015.

2. The Delegations of the following States, elected members of the Committee by the Diplomatic Conference, attended the meeting: Bosnia and Herzegovina, Burkina Faso, Cuba, Czech Republic, Georgia, Nicaragua and Portugal (7).

3. The President of the Committee, elected by the Diplomatic Conference, was Mr. Filipe Ramalheira (Portugal). The Vice-Presidents, elected by the Diplomatic Conference, were Mr. Milan Beránek (Czech Republic) and Ms. Jenny Arana Vizcaya (Nicaragua).

4. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Conference on May 11, 2015 (document LI/DC/2 Prov., hereinafter referred to as "the Rules of Procedure"), the Committee examined the credentials and full powers received since its first meeting on May 13, 2015, the report of which is contained in document LI/DC/10.

5. The Committee found in order:

(a) as far as Member Delegations are concerned, the credentials and full powers (that is, credentials for participating in the Conference and signing the Final Act, and full powers to also sign the Treaty to be adopted by the Diplomatic Conference) of the Delegation of Italy.

(b) as far as *Observer Delegations* are concerned, the *credentials* (without *full powers*) of the delegations of the following (3) States:

Angola
Kenya
Nigeria

(c) as far as the *Observers* are concerned, the *letters or documents of appointment* of representatives of the following Observers:

(iii) *intergovernmental organizations*: West African Economic and Monetary Union (WAEMU) (1).

(iv) *non-governmental organizations: Association romande de la propriété intellectuelle (AROPI), Chamber of Commerce and Industry of the Russian Federation (CCI RF) and Indigenous Peoples' Center for Documentation, Research and Information (DOCIP) (3).*

6. The Committee decided that the Delegation of the former Yugoslav Republic of Macedonia would appear in paragraph 7(a)(ii) (credentials) of the first report of the Committee, instead of paragraph 7(a)(i) (full powers).
 7. The Committee recommends to the Conference, meeting in Plenary, to accept the credentials and full powers of the delegation mentioned in paragraph 5(a), above, the credentials of the observer delegations mentioned in paragraph 5(b), above, and the letters of appointment of the Observers mentioned in paragraphs 5(c)(i) and 5(c)(ii), above.
 8. The Committee decided that a report on its meeting should be prepared by the Secretariat and issued as its report, to be presented by the President of the Committee to the Conference, meeting in Plenary.
 9. To date, a total number of 12 credentials (with full powers), 10 of which are from Lisbon Members, and a total number of 101 credentials without full powers (18 of which are from Lisbon Members and Special Delegations) have been found in order by the Committee.
 10. The Committee authorized its President to examine any further communications concerning Member Delegations, the Special Delegations, Observer Delegations or Observers which might be received by the Secretariat after the close of its second meeting, and to report thereon to the Conference, meeting in Plenary, unless the President deemed it necessary to convene the Committee to examine and report on those communications.
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LI/DC/13
May 15, 2015 (Original: French)

ARTICLES 22, 25 AND 29

Proposal by the Delegation of Algeria

The Delegation of Algeria proposes an amendment to Article 22 (3)(b) as follows.

Article 22(3)(b)

Notwithstanding the provisions of subparagraph (a), if, in any session, the number of the members of the Assembly which are States, have the right to vote on a given matter and are represented is less than two-thirds but equal to or more than one half of the members of the Assembly which are States and have the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled....

LI/DC/14

May 20, 2015 (Original: English)

**DRAFT NEW ACT OF THE LISBON AGREEMENT ON APPELLATIONS OF ORIGIN
AND GEOGRAPHICAL INDICATIONS***Submitted to Main Committees I and II*Contents**CHAPTER I: INTRODUCTORY AND GENERAL PROVISIONS**

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Chapter I **Introductory and General Provisions**

Article 1 Abbreviated Expressions

For the purposes of this Act, unless expressly stated otherwise:

(i) "Lisbon Agreement" means the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958;

(ii) "1967 Act" means the Lisbon Agreement as revised at Stockholm on July 14, 1967, and amended on September 28, 1979;

(iii) "this Act" means the Lisbon Agreement on Appellations of Origin and Geographical Indications, as established by the present Act;

(iv) "Regulations" means the Regulations as referred to in Article 25;

(v) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised and amended;

(vi) "appellation of origin" means a denomination as referred to in Article 2(1)(i);

(vii) "geographical indication" means an indication as referred to in Article 2(1)(ii);

(viii) "International Register" means the International Register maintained by the International Bureau in accordance with Article 4 as the official collection of data concerning international registrations of appellations of origin and geographical indications, regardless of the medium in which such data are maintained;

(ix) "international registration" means an international registration recorded in the International Register;

(x) "application" means an application for international registration;

(xi) "registered" means entered in the International Register in accordance with this Act;

(xii) "geographical area of origin" means a geographical area as referred to in Article 2(2);

(xiii) "trans-border geographical area" means a geographical area situated in, or covering, adjacent Contracting Parties;

(xiv) "Contracting Party" means any State or intergovernmental organization party to this Act;

(xv) “Contracting Party of Origin” means the Contracting Party where the geographical area of origin is situated or the Contracting Parties where the trans-border geographical area of origin is situated;

(xvi) “Competent Authority” means an entity designated in accordance with Article 3;

(xvii) “beneficiaries” means the natural persons or legal entities entitled under the law of the Contracting Party of Origin to use an appellation of origin or a geographical indication;

(xviii) “intergovernmental organization” means an intergovernmental organization eligible to become party to this Act in accordance with Article 28(1)(iii);

(xix) “Organization” means the World Intellectual Property Organization;

(xx) “Director General” means the Director General of the Organization;

(xxi) “International Bureau” means the International Bureau of the Organization.

Article 2 Subject-Matter

(1) *[Appellations of Origin and Geographical Indications]* This Act applies in respect of:

(i) any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation; as well as

(ii) any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

(2) *[Possible Geographical Areas of Origin]* A geographical area of origin as described in paragraph (1) may consist of the entire territory of the Contracting Party of Origin or a region, locality or place in the Contracting Party of Origin. This does not exclude the application of this Act in respect of a geographical area of origin, as described in paragraph (1), consisting of a trans-border geographical area, or a part thereof.

Article 3
Competent Authority

Each Contracting Party shall designate an entity which shall be responsible for the administration of this Act in its territory and for communications with the International Bureau under this Act and the Regulations. The Contracting Party shall notify the name and contact details of such Competent Authority to the International Bureau, as specified in the Regulations.

Article 4
International Register

The International Bureau shall maintain an International Register recording international registrations effected under this Act, under the Lisbon Agreement and the 1967 Act, or under both, and data relating to such international registrations.

Chapter II
Application and International Registration

Article 5
Application

- (1) *[Place of Filing]* Applications shall be filed with the International Bureau.
- (2) *[Application Filed by Competent Authority]* Subject to paragraph (3), the application for the international registration of an appellation of origin or a geographical indication shall be filed by the Competent Authority in the name of:
- (i) the beneficiaries; or
 - (ii) a natural person or legal entity having legal standing under the law of the Contracting Party of Origin to assert the rights of the beneficiaries or other rights in the appellation of origin or geographical indication.
- (3) *[Application Filed Directly]* (a) Without prejudice to paragraph (4), if the legislation of the Contracting Party of Origin so permits, the application may be filed by the beneficiaries or by a natural person or legal entity referred to in paragraph (2)(ii).
- (b) Subparagraph (a) applies subject to a declaration from the Contracting Party that its legislation so permits. Such declaration may be made by the Contracting Party at the time of deposit of its instrument of ratification or accession or at any later time. Where the declaration is made at the time of the deposit of its instrument of ratification or accession, it shall take effect upon the entry into force of this Act with respect to that Contracting Party. Where the declaration is made after the entry into force of this Act with respect to the Contracting Party, it shall take effect three months after the date on which the Director General has received the declaration.

(4) *[Possible Joint Application in the Case of a Trans-border Geographical Area]* In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may, in accordance with their agreement, file an application jointly through a commonly designated Competent Authority.

(5) *[Mandatory Contents]* The Regulations shall specify the mandatory particulars that must be included in the application, in addition to those specified in Article 6(3).

(6) *[Optional Contents]* The Regulations may specify the optional particulars that may be included in the application.

Article 6

International Registration

(1) *[Formal Examination by the International Bureau]* Upon receipt of an application for the international registration of an appellation of origin or a geographical indication in due form, as specified in the Regulations, the International Bureau shall register the appellation of origin, or the geographical indication, in the International Register.

(2) *[Date of International Registration]* Subject to paragraph (3), the date of the international registration shall be the date on which the application was received by the International Bureau.

(3) *[Date of International Registration Where Particulars Missing]* Where the application does not contain all the following particulars:

(i) the identification of the Competent Authority or, in the case of Article 5(3), the applicant or applicants;

(ii) the details identifying the beneficiaries and, where applicable, the natural person or legal entity referred to in Article 5(2)(ii);

(iii) the appellation of origin, or the geographical indication, for which international registration is sought;

(iv) the good or goods to which the appellation of origin, or the geographical indication, applies;

(v) the date of the international registration shall be the date on which the last of the missing particulars is received by the International Bureau.

(4) *[Publication and Notification of International Registrations]* The International Bureau shall, without delay, publish each international registration and notify the Competent Authority of each Contracting Party of the international registration.

(5) *[Date of Effect of International Registration]* (a) Subject to subparagraph (b), a registered appellation of origin or geographical indication shall, in each Contracting Party that has not refused protection in accordance with Article 15, or that has sent to the International

Bureau a notification of grant of protection in accordance with Article 18, be protected from the date of the international registration.

(b) A Contracting Party may, in a declaration, notify the Director General that, in accordance with its national or regional legislation, a registered appellation of origin or geographical indication is protected from a date that is mentioned in the declaration, which date shall however not be later than the date of expiry of the time limit for refusal specified in the Regulations in accordance with Article 15(1)(a).

Article 7

Fees

(1) [*International Registration Fee*] International registration of each appellation of origin, and each geographical indication, shall be subject to payment of the fee specified in the Regulations.

(2) [*Fees for Other Entries in the International Register*] The Regulations shall specify the fees to be paid in respect of other entries in the International Register and for the supply of extracts, attestations, or other information concerning the contents of the international registration.

(3) [*Fee Reductions*] Reduced fees shall be established by the Assembly in respect of certain international registrations of appellations of origin, and in respect of certain international registrations of geographical indications, in particular those in respect of which the Contracting Party of Origin is a developing country or a least-developed country.

(4) [*Individual Fee*] (a) Any Contracting Party may, in a declaration, notify the Director General that the protection resulting from international registration shall extend to it only if a fee is paid to cover its cost of substantive examination of the international registration. The amount of such individual fee shall be indicated in the declaration and can be changed in further declarations. The said amount may not be higher than the equivalent of the amount required under the national or regional legislation of the Contracting Party diminished by the savings resulting from the international procedure. Additionally, the Contracting Party may, in a declaration, notify the Director General that

ALTERNATIVE A

protection resulting from the international registration shall be subject to maintenance or renewal requirements and fee payments.

ALTERNATIVE B

it requires an administrative fee relating to the use by the beneficiaries of the appellation of origin or the geographical indication in that Contracting Party.

(b) Non-payment of an individual fee shall, in accordance with the Regulations, have the effect that protection is renounced in respect of the Contracting Party requiring the fee.

Article 8

Period of Validity of International Registrations

(1) *[Dependency]* International registrations shall be valid indefinitely, on the understanding that the protection of a registered appellation of origin or geographical indication shall no longer be required if the denomination constituting the appellation of origin, or the indication constituting the geographical indication, is no longer protected in the Contracting Party of Origin.

(2) *[Cancellation]* (a) The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time request the International Bureau to cancel the international registration concerned.

(b) In case the denomination constituting a registered appellation of origin, or the indication constituting a registered geographical indication, is no longer protected in the Contracting Party of Origin, the Competent Authority of the Contracting Party of Origin shall request cancellation of the international registration.

Chapter III
Protection**Article 9**

Commitment to Protect

Each Contracting Party shall protect registered appellations of origin and geographical indications on its territory, within its own legal system and practice but in accordance with the terms of this Act, subject to any refusal, renunciation, invalidation or cancellation that may become effective with respect to its territory, and on the understanding that Contracting Parties that do not distinguish in their national or regional legislation as between appellations of origin and geographical indications shall not be required to introduce such a distinction into their national or regional legislation.

Article 10

Protection Under Laws of Contracting Parties or Other Instruments

(1) *[Form of Legal Protection]* Each Contracting Party shall be free to choose the type of legislation under which it establishes the protection stipulated in this Act, provided that such legislation meets the substantive requirements of this Act.

(2) *[Protection Under Other Instruments]* The provisions of this Act shall not in any way affect any other protection a Contracting Party may accord in respect of registered appellations of origin or registered geographical indications under its national or regional legislation, or under other international instruments.

(3) *[Relation to Other Instruments]* Nothing in this Act shall derogate from any obligations that Contracting Parties have to each other under any other international instruments, nor shall it prejudice any rights that a Contracting Party has under any other international instruments.

Article 11

Protection in Respect of Registered Appellations of Origin and Geographical Indications

(1) *[Content of Protection]* Subject to the provisions of this Act, in respect of a registered appellation of origin or a registered geographical indication, each Contracting Party shall provide the legal means to prevent:

(a) use of the appellation of origin or the geographical indication

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

(ii) in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies or services, if such use would indicate or suggest a connection between those goods or services and the beneficiaries of the appellation of origin or the geographical indication, and would be likely to damage their interests, or, where applicable, because of the reputation of the appellation of origin or geographical indication in the Contracting Party concerned, such use would be likely to impair or dilute in an unfair manner, or take unfair advantage of, that reputation;

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

(2) *[Content of Protection in Respect of Certain Uses]* Paragraph (1)(a) shall also apply to use of the appellation of origin or geographical indication amounting to its imitation, even if the true origin of the goods is indicated, or if the appellation of origin or the geographical indication is used in translated form or is accompanied by terms such as "style", "kind", "type", "make", "imitation", "method", "as produced in", "like", "similar" or the like¹².

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

¹² Where certain elements of the denomination or indication constituting the appellation of origin or geographical indication have a generic character in the Contracting Party of Origin, their protection under this subparagraph shall not be required in the other Contracting Parties. For greater certainty, a refusal or invalidation of a trademark, or a finding of infringement, in the Contracting Parties under the terms of Article 11 cannot be based on the component that has a generic character.

Article 12

Protection Against Becoming Generic

Subject to the provisions of this Act, registered appellations of origin and registered geographical indications cannot be considered to have become generic¹³ in a Contracting Party.

Article 13

Safeguards in Respect of Other Rights

(1) [*Prior Trademark Rights*] The provisions of this Act shall not prejudice a prior trademark applied for or registered in good faith, or acquired through use in good faith, in a Contracting Party. Where the law of a Contracting Party provides a limited exception to the rights conferred by a trademark to the effect that such a prior trademark in certain circumstances may not entitle its owner to prevent a registered appellation of origin or geographical indication from being granted protection or used in that Contracting Party, protection of the registered appellation of origin or geographical indication shall not limit the rights conferred by that trademark in any other way.

(2) [*Personal Name Used in Business*] The provisions of this Act shall not prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

(3) [*Rights Based on a Plant Variety or Animal Breed Denomination*] The provisions of this Act shall not prejudice the right of any person to use a plant variety or animal breed denomination in the course of trade, except where such plant variety or animal breed denomination is used in such a manner as to mislead the public.

(4) [*Safeguards in the Case of Notification of Withdrawal of Refusal or a Grant of Protection*] Where a Contracting Party that has refused the effects of an international registration under Article 15 on the ground of use under a prior trademark or other right, as referred to in this Article, notifies the withdrawal of that refusal under Article 16 or a grant of protection under Article 18, the resulting protection of the appellation of origin or geographical indication shall not prejudice that right or its use, unless the protection was granted following the cancellation, non-renewal, revocation or invalidation of the right.

¹³ Article 12 is without prejudice to the application of the provisions of this Act concerning prior use, as, prior to international registration, the denomination or indication constituting the appellation of origin or geographical indication may already, in whole or in part, be generic in a Contracting Party other than the Contracting Party of Origin, for example, because the denomination or indication, or part of it, is identical with a term customary in common language as the common name of a good or service in such Contracting Party, or is identical with the customary name of a grape variety in such Contracting Party.

Article 14

Enforcement Procedures and Remedies

Each Contracting Party shall make available effective legal remedies for the protection of registered appellations of origin and registered geographical indications and provide that legal proceedings for ensuring their protection may be brought by a public authority or by any interested party, whether a natural person or a legal entity and whether public or private, depending on its legal system and practice¹⁴.

Chapter IV**Refusal and Other Actions in Respect of International Registrations****Article 15**

Refusal

(1) *[Refusal of Effects of International Registration]* (a) Within the time limit specified in the Regulations, the Competent Authority of a Contracting Party may notify the International Bureau of the refusal of the effects of an international registration in its territory. The notification of refusal may be made by the Competent Authority *ex officio*, if its legislation so permits, or at the request of an interested party.

(b) The notification of refusal shall set out the grounds on which the refusal is based.

(2) *[Protection Under Other Instruments]* The notification of a refusal shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party to which the refusal relates.

(3) *[Obligation to Provide Opportunity for Interested Parties]* Each Contracting Party shall provide a reasonable opportunity, for anyone whose interests would be affected by an international registration, to request the Competent Authority to notify a refusal in respect of the international registration.

(4) *[Registration, Publication and Communication of Refusals]* The International Bureau shall record the refusal and the grounds for the refusal in the International Register. It shall publish the refusal and the grounds for the refusal and shall communicate the notification of refusal to the Competent Authority of the Contracting Party of Origin or, where the application has been filed directly in accordance with Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

¹⁴ Draft Agreed Statement: “It is understood that nothing in this Act prevents a court or competent authority in a Contracting Party from refusing to enforce rights in a registered appellation of origin or geographical indication if, after due process, such court or competent authority finds that behavior by beneficiaries or their representative has led to the appellation of origin or geographical indication to lose its ability to designate a good as originating in the geographical area identified by the appellation of origin or geographical indication.”

(5) *[National Treatment]* Each Contracting Party shall make available to interested parties affected by a refusal the same judicial and administrative remedies that are available to its own nationals in respect of the refusal of protection for an appellation of origin or a geographical indication.

Article 16

Withdrawal of Refusal

A refusal may be withdrawn in accordance with the procedures specified in the Regulations. A withdrawal shall be recorded in the International Register.

Article 17

Transitional Period

(1) *[Option to Grant Transitional Period]* Without prejudice to Article 13, where a Contracting Party has not refused the effects of an international registration on the ground of prior use by a third party or has withdrawn such refusal or has notified a grant of protection, it may, if its legislation so permits, grant a defined period as specified in the Regulations, for terminating such use.

(2) *[Notification of a Transitional Period]* The Contracting Party shall notify the International Bureau of any such period, in accordance with the procedures specified in the Regulations.

Article 18

Notification of Grant of Protection

The Competent Authority of a Contracting Party may notify the International Bureau of the grant of protection to a registered appellation of origin or geographical indication. The International Bureau shall record any such notification in the International Register and publish it.

Article 19

Invalidation

(1) *[Opportunity to Defend Rights]* Invalidation of the effects, in part or in whole, of an international registration in the territory of a Contracting Party may be pronounced only after having given the beneficiaries an opportunity to defend their rights. Such opportunity shall also be given to the natural person or legal entity referred to in Article 5(2)(ii).

(2) *[Notification, Recordal and Publication]* The Contracting Party shall notify the invalidation of the effects of an international registration to the International Bureau, which shall record the invalidation in the International Register and publish it.

(3) *[Protection Under Other Instruments]* Invalidation shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party that invalidated the effects of the international registration.

Article 20

Modifications and Other Entries in the International Register

Procedures for the modification of international registrations and other entries in the International Register shall be specified in the Regulations.

Chapter V

Administrative Provisions

Article 21

Membership of the Lisbon Union

The Contracting Parties shall be members of the same Special Union as the States party to the Lisbon Agreement or the 1967 Act, whether or not they are party to the Lisbon Agreement or the 1967 Act.

Article 22

Assembly of the Special Union

(1) *[Composition]* (a) The Contracting Parties shall be members of the same Assembly as the States party to the 1967 Act.

(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(c) Each delegation shall bear its own expenses.

(2) *[Tasks]* (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Act;

(ii) give directions to the Director General concerning the preparation of revision conferences referred to in Article 26(1), due account being taken of any comments made by those members of the Special Union which have not ratified or acceded to this Act;

(iii) amend the Regulations;

(iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him or her all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the biennial budget of the Special Union, and approve its final accounts;

(vi) adopt the financial Regulations of the Special Union;

(vii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Special Union;

(viii) determine which States, intergovernmental and non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 22 to 24 and 27;

(x) take any other appropriate action to further the objectives of the Special Union and perform any other functions as are appropriate under this Act.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) [*Quorum*] (a) One-half of the members of the Assembly which have the right to vote on a given matter shall constitute a quorum for the purposes of the vote on that matter.

(b) Notwithstanding the provisions of subparagraph (a), if, in any session, the number of the members of the Assembly which are States, have the right to vote on a given matter and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States and have the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States, have the right to vote on the said matter and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(4) [*Taking Decisions in the Assembly*] (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

(ii) any Contracting Party that is an intergovernmental organization may vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Act. No such intergovernmental organization shall participate in the vote if any one of its member States exercises its right to vote, and *vice versa*.

(c) On matters concerning only States that are bound by the 1967 Act, Contracting Parties that are not bound by the 1967 Act shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.

(5) *[Majorities]* (a) Subject to Articles 25(2) and 27(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(6) *[Sessions]* (a) The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the members of the Assembly or on the Director General's own initiative.

(c) The agenda of each session shall be prepared by the Director General.

(7) *[Rules of Procedure]* The Assembly shall adopt its own rules of procedure.

Article 23

International Bureau

(1) *[Administrative Tasks]* (a) International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the Secretariat of the Assembly and of such committees and working groups as may have been established by the Assembly.

(c) The Director General shall be the Chief Executive of the Special Union and shall represent the Special Union.

(2) *[Role of the International Bureau in the Assembly and Other Meetings]* The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly. The Director General, or a staff member designated by him, shall be *ex officio* Secretary of such a body.

(3) *[Conferences]* (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with intergovernmental and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(4) *[Other Tasks]* The International Bureau shall carry out any other tasks assigned to it in relation to this Act.

Article 24

Finances

(1) *[Budget]* The income and expenses of the Special Union shall be reflected in the budget of the Organization in a fair and transparent manner.

(2) *[Sources of Financing of the Budget]* The income of the Special Union shall be derived from the following sources:

(i) fees collected under Article 7(1) and (2);

(ii) proceeds from the sale of, or royalties on, the publications of the International Bureau;

(iii) gifts, bequests, and subventions;

(iv) rent, investment revenue, and other, including miscellaneous, income;

(v) special contributions of the Contracting Parties or any alternative source derived from the Contracting Parties or beneficiaries, or both, if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses, as decided by the Assembly.

(3) *[Fixing of Fees; Level of the Budget]* (a) The amounts of the fees referred to in paragraph (2) shall be fixed by the Assembly on the proposal of the Director General and shall be so fixed that, together with the income derived from other sources under paragraph (2), the revenue of the Special Union should, under normal circumstances, be sufficient to cover the expenses of the International Bureau for maintaining the international registration service.

(b) If the Program and Budget of the Organization is not adopted before the beginning of a new financial period, the authorization to the Director General to incur obligations and make payments shall be at the same level as it was in the previous financial period.

(4) *[Establishing the Special Contributions Referred to in Paragraph (2)(v)]* For the purpose of establishing its contribution, each Contracting Party shall belong to the same class as it belongs to in the context of the Paris Convention or, if it is not a Contracting Party of the Paris Convention, as it would belong to if it were a Contracting Party of the Paris Convention. Intergovernmental organizations shall be considered to belong to contribution class I (one),

unless otherwise unanimously decided by the Assembly. The contribution [shall] [may] be partially weighted according to the number of registrations originating in the Contracting Party, as decided by the Assembly.

(5) *[Working Capital Fund]* The Special Union shall have a working capital fund, which shall be constituted by payments made by way of advance by each member of the Special Union when the Special Union so decides. If the fund becomes insufficient, the Assembly may decide to increase it. The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General. Should the Special Union record a surplus of income over expenditure in any financial period, the Working Capital Fund advances may be repaid to each member proportionate to their initial payments upon proposal by the Director General and decision by the Assembly.

(6) *[Advances by Host State]* (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(7) *[Auditing of Accounts]* The auditing of the accounts shall be effected by one or more of the States members of the Special Union or by external auditors, as provided in the Financial Regulations of the Organization. They shall be designated, with their agreement, by the Assembly.

Article 25 Regulations

(1) *[Subject-Matter]* The details for carrying out this Act shall be established in the Regulations.

(2) *[Amendment of Certain Provisions of the Regulations]* (a) The Assembly may decide that certain provisions of the Regulations may be amended only by unanimity or only by a three-fourths majority.

(b) In order for the requirement of unanimity or a three-fourths majority no longer to apply in the future to the amendment of a provision of the Regulations, unanimity shall be required.

(c) In order for the requirement of unanimity or a three-fourths majority to apply in the future to the amendment of a provision of the Regulations, a three-fourths majority shall be required.

(3) *[Conflict Between This Act and the Regulations]* In the case of conflict between the provisions of this Act and those of the Regulations, the former shall prevail.

Chapter VI **Revision and Amendment**

Article 26 Revision

- (1) *[Revision Conferences]* This Act may be revised by Diplomatic Conferences of the Contracting Parties. The convocation of any Diplomatic Conference shall be decided by the Assembly.
- (2) *[Revision or Amendment of Certain Articles]* Articles 22 to 24 and 27 may be amended either by a revision conference or by the Assembly according to the provisions of Article 27.

Article 27 Amendment of Certain Articles by the Assembly

- (1) *[Proposals for Amendment]* (a) Proposals for the amendment of Articles 22 to 24, and the present Article, may be initiated by any Contracting Party or by the Director General.
- (b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.
- (2) *[Majorities]* Adoption of any amendment to the Articles referred to in paragraph (1) shall require a three-fourths majority, except that adoption of any amendment to Article 22, and to the present paragraph, shall require a four-fifths majority.
- (3) *[Entry into Force]* (a) Except where subparagraph (b) applies, any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of those Contracting Parties which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on that amendment.
- (b) Any amendment to Article 22(3) or (4) or to this subparagraph shall not enter into force if, within six months of its adoption by the Assembly, any Contracting Party notifies the Director General that it does not accept such amendment.
- (c) Any amendment which enters into force in accordance with the provisions of this paragraph shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

Chapter VII Final Provisions

Article 28 Becoming Party to This Act

(1) *[Eligibility]* Subject to Article 29 and paragraphs (2) and (3) of the present Article,

(i) any State which is party to the Paris Convention may sign and become party to this Act;

(ii) any other State member of the Organization may sign and become party to this Act if it declares that its legislation complies with the provisions of the Paris Convention concerning appellations of origin, geographical indications and trademarks;

(iii) any intergovernmental organization may sign and become party to this Act, provided that at least one member State of that intergovernmental organization is party to the Paris Convention and provided that the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Act and that, under the constituting treaty of the intergovernmental organization, legislation applies under which regional titles of protection can be obtained in respect of geographical indications.

(2) *[Ratification or Accession]* Any State or intergovernmental organization referred to in paragraph (1) may deposit

(i) an instrument of ratification, if it has signed this Act; or

(ii) an instrument of accession, if it has not signed this Act.

(3) *[Effective Date of Deposit]* (a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.

(b) The effective date of the deposit of the instrument of ratification or accession of any State that is a member State of an intergovernmental organization and in respect of which the protection of appellations of origin or geographical indications can only be obtained on the basis of legislation applying between the member States of the intergovernmental organization shall be the date on which the instrument of ratification or accession of that intergovernmental organization is deposited, if that date is later than the date on which the instrument of the said State has been deposited. However, this subparagraph does not apply with regard to States that are party to the Lisbon Agreement or the 1967 Act and shall be without prejudice to the application of Article 31 with regard to such States.

Article 29

Effective Date of Ratifications and Accessions

- (1) *[Instruments to Be Taken into Consideration]* For the purposes of this Article, only instruments of ratification or accession that are deposited by States or intergovernmental organizations referred to in Article 28(1) and that have an effective date according to Article 28(3) shall be taken into consideration.
- (2) *[Entry into Force of This Act]* This Act shall enter into force three months after five eligible parties referred to in Article 28 have deposited their instruments of ratification or accession.
- (3) *[Entry into Force of Ratifications and Accessions]* (a) Any State or intergovernmental organization that has deposited its instrument of ratification or accession three months or more before the date of entry into force of this Act shall become bound by this Act on the date of the entry into force of this Act.
- (b) Any other State or intergovernmental organization shall become bound by this Act three months after the date on which it has deposited its instrument of ratification or accession or at any later date indicated in that instrument.
- (4) *[International Registrations Effected Prior to Accession]* In the territory of the acceding State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies, the provisions of this Act shall apply in respect of appellations of origin and geographical indications already registered under this Act at the time the accession becomes effective, subject to Article 7(4) as well as the provisions of Chapter IV, which shall apply *mutatis mutandis*. The acceding State or intergovernmental organization may also specify, in a declaration attached to its instrument of ratification or accession, an extension of the time limit referred to in Article 15(1), and the periods referred to in Article 17, in accordance with the procedures specified in the Regulations in that respect.

Article 30

Prohibition of Reservations

No reservations to this Act are permitted.

Article 31

Application of the Lisbon Agreement and the 1967 Act

- (1) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act]* This Act alone shall be applicable as regards the mutual relations of States party to both this Act and the Lisbon Agreement or the 1967 Act. However, with regard to international registrations of appellations of origin effective under the Lisbon Agreement or the 1967 Act, the States shall accord no lower protection than is required by the Lisbon Agreement or the 1967 Act.

(2) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act and States Party to the Lisbon Agreement or the 1967 Act Without Being Party to This Act]* Any State party to both this Act and the Lisbon Agreement or the 1967 Act shall continue to apply the Lisbon Agreement or the 1967 Act, as the case may be, in its relations with States party to the Lisbon Agreement or the 1967 Act that are not party to this Act.

Article 32
Denunciation

(1) *[Notification]* Any Contracting Party may denounce this Act by notification addressed to the Director General.

(2) *[Effective Date]* Denunciation shall take effect one year after the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Act to any application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

Article 33
Languages of this Act; Signature

(1) *[Original Texts; Official Texts]* (a) This Act shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) *[Time Limit for Signature]* This Act shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 34
Depositary

The Director General shall be the depositary of this Act.

LI/DC/15
May 20, 2015 (Original: English)

DRAFT REGULATIONS UNDER THE DRAFT NEW ACT OF THE LISBON
AGREEMENT ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL
INDICATIONS

Submitted to Main Committees I and II

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Chapter I **Introductory and General Provisions**

Rule 1 Abbreviated Expressions

For the purposes of these Regulations, unless expressly stated otherwise:

- (i) abbreviated expressions defined in Article 1 shall have the same meaning in these Regulations;
- (ii) "Rule" refers to a rule of these Regulations;
- (iii) "Administrative Instructions" means the Administrative Instructions referred to in Rule 24;
- (iv) "Official Form" means a form drawn up by the International Bureau.

Rule 2 Calculation of Time Limits

- (1) *[Periods Expressed in Years]* A period expressed in years shall expire in the subsequent year on the same day and month as the day and month of the event from which the period starts to run, except that, where the event occurred on February 29, the period shall expire on February 28 of the subsequent year.
- (2) *[Periods Expressed in Months]* A period expressed in months shall expire in the relevant subsequent month on the same day as the day of the event from which the period starts to run, except that, where the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month.
- (3) *[Expiry on a Day Which Is Not a Working Day for the International Bureau or a Competent Authority]* If the period of a time limit applying to the International Bureau or a Competent Authority expires on a day which is not a working day for the International Bureau or a Competent Authority, the period shall, notwithstanding paragraphs (1) and (2), expire for the International Bureau or the Competent Authority, as the case may be, on the first subsequent working day.

Rule 3 Working Languages

- (1) *[Application]* The application shall be in English, French or Spanish.
- (2) *[Communications Subsequent to the International Application]* Any communication concerning an application or an international registration shall be in English, French or Spanish, at the choice of the Competent Authority concerned or, in the case of Article 5(3), at the choice of the beneficiaries or the natural person or legal entity referred to in

Article 5(2)(ii). Any translation needed for the purposes of these procedures shall be made by the International Bureau.

(3) [*Entries in the International Register and Publication*] Entries in the International Register and publication of such entries by the International Bureau shall be in English, French and Spanish. The translations needed for those purposes shall be made by the International Bureau. However, the International Bureau shall not translate the appellation of origin or the geographical indication.

(4) [*Transliteration of the Appellation of Origin or Geographical Indication*] Where the application contains a transliteration of the appellation of origin or the geographical indication in accordance with Rule 5(2)(b), the International Bureau shall not check whether the transliteration is correct.

Rule 4

Competent Authority

(1) [*Notification to the International Bureau*] Upon accession, each Contracting Party shall notify the International Bureau of the name and contact details of its Competent Authority, i.e. the authority it has designated to present applications and other notifications to, and receive notifications from, the International Bureau. In addition, such Competent Authority shall make available information on the applicable procedures in the Contracting Party for the enforcement of rights in appellations of origin and geographical indications.

(2) [*One Authority or Different Authorities*] The notification referred to in paragraph (1) shall, preferably, indicate a single Competent Authority. When a Contracting Party notifies different Competent Authorities, this notification shall clearly indicate their respective competence in respect of the presentation of applications to, and the receipt of notifications from, the International Bureau.

(3) [*Modifications*] Contracting Parties shall notify the International Bureau of any change in the particulars referred to in paragraph (1). However, the International Bureau may *ex officio* take cognizance of a change in the absence of a notification where it has clear indications that such a change has taken place.

Chapter II

Application and International Registration

Rule 5

Requirements Concerning the Application

- (1) *[Filing]* The application shall be filed with the International Bureau on the Official Form provided to that end and shall be signed by the Competent Authority presenting it or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii).
- (2) *[Application – Mandatory Contents]* (a) The application shall indicate:
- (i) the Contracting Party of Origin;
 - (ii) the Competent Authority presenting the application or, in the case of Article 5(3), details identifying the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii);
 - (iii) the beneficiaries, designated collectively or, where collective designation is not possible, by name, or the natural person or legal entity having legal standing under the law of the Contracting Party of Origin to assert the rights of the beneficiaries or other rights in the appellation of origin or the geographical indication;
 - (iv) the appellation of origin or the geographical indication for which registration is sought, in the official language of the Contracting Party of Origin or, where the Contracting Party of Origin has more than one official language, in the official language or languages in which the appellation of origin or the geographical indication is contained in the registration, act or decision, by virtue of which protection is granted in the Contracting Party of Origin¹⁵;
 - (v) the good or goods to which the appellation of origin, or the geographical indication, applies, as precisely as possible;
 - (vi) the geographical area of origin or the geographical area of production of the good or goods;
 - (vii) the identifying details, including the date of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin.
- (b) If they are not in Latin characters, the application shall include a transliteration of the names of the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), of the geographical area of origin, and of the appellation of origin or the

¹⁵ The application of Rule 5(2)(a)(iv) and Rule 5(2)(b) is subject to the provisions of Rule 3(3) and (4).

geographical indication for which registration is sought. The transliteration shall use the phonetics of the language of the application¹⁶.

(c) The application shall be accompanied by the registration fee and any other fees, as specified in Rule 8.

(3) [*Application – Particulars Concerning the Quality, Reputation or Characteristic(s)*] (a) To the extent that a Contracting Party requires that, for the protection of a registered appellation of origin or geographical indication in its territory, the application further indicate particulars concerning, in the case of an appellation of origin, the quality or characteristics of the good and its connection with the geographical environment of the geographical area of production, and, in the case of a geographical indication, the quality, reputation or other characteristic of the good and its connection with the geographical area of origin, it shall notify that requirement to the Director General.

(b) In order to meet such a requirement, particulars as referred to in subparagraph (a) shall be provided in a working language, but they shall not be translated by the International Bureau.

(c) An application that is not in accordance with a requirement as notified by a Contracting Party under subparagraph (a) shall, subject to Rule 6, have the effect that protection is renounced in respect of that Contracting Party.

(4) [*Application – Signature and/or Intention to Use*] (a) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication the application be signed by a person having legal standing to assert the rights conferred by such protection, it shall notify that requirement to the Director General.

(b) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication the application be accompanied by a declaration of intention to use the registered appellation of origin or geographical indication in its territory or a declaration of intention to exercise control over the use by others of the registered appellation of origin or geographical indication in its territory, it shall notify that requirement to the Director General.

(c) An application that is not signed in accordance with subparagraph (a), or that is not accompanied by a declaration indicated in subparagraph (b), shall, subject to Rule 6, have the effect that protection is renounced in respect of the Contracting Party requiring such signature or declaration, as notified under subparagraphs (a) and (b).

(5) [*Application – Protection Not Claimed for Certain Elements of the Appellation of Origin or the Geographical Indication*] The application shall indicate whether or not, to the best knowledge of the applicant, the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin, specifies that protection is not granted for certain elements of the appellation of origin or the geographical indication. Any such elements shall be indicated in the application in a working language.

¹⁶ The application of Rule 5(2)(a)(iv) and Rule 5(2)(b) is subject to the provisions of Rule 3(3) and (4).

- (6) *[Application – Optional Contents]* The application may indicate or contain:
- (i) the addresses of the beneficiaries;
 - (ii) a declaration that protection is renounced in one or more Contracting Parties;
 - (iii) a copy in the original language of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin or the geographical indication in the Contracting Party of Origin;
 - (iv) a statement to the effect that protection is not claimed for certain elements, other than those referred to in paragraph (5) of the appellation of origin or the geographical indication.

Rule 6 Irregular Applications

(1) *[Examination of the Application and Correction of Irregularities]* (a) Subject to paragraph (2), if the International Bureau finds that an application does not satisfy the conditions set out in Rule 3(1) or Rule 5, it shall defer registration and invite the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), to remedy the irregularity found within a period of three months from the date on which the invitation was sent.

(b) If the irregularity found is not corrected within two months of the date of the invitation referred to in subparagraph (a), the International Bureau shall send a reminder of its invitation. The sending of such a reminder shall have no effect on the three-month period referred to in subparagraph (a).

(c) If the correction of the irregularity is not received by the International Bureau within the three-month period referred to in subparagraph (a), the application shall, subject to subparagraph (d), be rejected by the International Bureau, which shall inform the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority, accordingly.

(d) In the case of an irregularity with respect to a requirement based on a notification made under Rule 5(3) or (4), or on a declaration made under Article 7(4), if the correction of the irregularity is not received by the International Bureau within the three-month period referred to in subparagraph (a), the protection resulting from the international registration shall be considered to be renounced in the Contracting Party having made the notification or the declaration.

(e) Where, in accordance with subparagraph (c), the application is rejected, the International Bureau shall refund the fees paid in respect of the application, after deduction of an amount corresponding to half the registration fee referred to in Rule 8.

(2) *[Application Not Considered as Such]* If the application is not filed by the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), it shall not be considered as such by the International Bureau and shall be returned to the sender.

Rule 7

Entry in the International Register

(1) *[Registration]* (a) Where the International Bureau finds that the application satisfies the conditions set out in Rules 3(1) and 5, it shall enter the appellation of origin or the geographical indication in the International Register.

(b) Where the application is also governed by the Lisbon Agreement or the 1967 Act, the International Bureau shall enter the appellation of origin in the International Register if it finds that the application satisfies the conditions set out in Rules 3(1) and 5 of the Regulations that apply in respect of the Lisbon Agreement or the 1967 Act.

(c) The International Bureau shall indicate per Contracting Party whether the international registration is governed by this Act or by the Lisbon Agreement or the 1967 Act.

(2) *[Contents of the Registration]* The international registration shall contain or indicate:

- (i) all the particulars given in the application;
- (ii) the language in which the International Bureau received the application;
- (iii) the number of the international registration;
- (iv) the date of the international registration.

(3) *[Certificate and Notification]* The International Bureau shall:

(i) send a certificate of international registration to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), to the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) that requested the registration; and

(ii) notify the international registration to the Competent Authority of each Contracting Party.

(4) *[Implementation of Article 31(1)]* (a) In case of the ratification of, or accession to, this Act by a State that is party to the Lisbon Agreement or the 1967 Act, Rule 5(2) to (4) shall apply *mutatis mutandis* with regard to international registrations or appellations of origin effective under the Lisbon Agreement or the 1967 Act in respect of that State. The International Bureau shall verify with the Competent Authority concerned any modifications to be made, in view of the requirements of Rules 3(1) and 5(2) to (4), for the purpose of their registration under this Act and notify international registrations thus effected to all other Contracting Parties. Modifications shall be subject to payment of the fee specified in Rule 8(1)(ii).

(b) Any declaration of refusal or notification of invalidation issued by a Contracting Party that is also party to the Lisbon Agreement or the 1967 Act shall remain effective under this Act, unless the Contracting Party notifies a withdrawal of refusal under Article 16 or a grant of protection under Article 18.

(c) Where subparagraph (b) does not apply, any Contracting Party that is also party to the Lisbon Agreement or the 1967 Act shall, upon receipt of a notification under subparagraph (a), continue to protect the appellation of origin concerned thenceforth also under this Act, unless the Contracting Party indicates otherwise. Any period granted under Article 5(6) of the Lisbon Agreement or the 1967 Act and still effective at the time the notification under subparagraph (a) is received shall, for its remainder, be subject to the provisions of Article 17.

Rule 8

Fees

(1) [*Amount of Fees*] The International Bureau shall collect the following fees¹⁷, payable in Swiss francs:

- | | |
|--|-----|
| (i) fee for international registration | ... |
| (ii) fee for each modification of an international registration | ... |
| (iii) fee for providing an extract from the International Register | ... |
| (iv) fee for providing an attestation or any other written information concerning the contents of the International Register | ... |
| (v) individual fees as referred to in paragraph (2) | |

(2) [*Establishment of the Amount of Individual Fees*] (a) Where a Contracting Party makes a declaration as referred to in Article 7(4) that it wants to receive an individual fee, as referred to in that provision, the amount of such fee shall be indicated in the currency used by the Competent Authority.

(b) Where the fee is indicated in the declaration referred to in subparagraph (a) in a currency other than Swiss currency, the Director General shall, after consultation with the Competent Authority of the Contracting Party, establish the amount of the fee in Swiss currency on the basis of the official exchange rate of the United Nations.

(c) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual fee has been indicated by a Contracting Party is higher or lower by at least 5 per cent than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Competent Authority of that Contracting Party may ask the Director General to establish a new amount of the fee in Swiss currency according to the official exchange rate of the United Nations prevailing on the day preceding the day on which the request is made. The Director General shall proceed accordingly. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount on the website of the Organization.

¹⁷ The amounts of the fees are to be decided by the Assembly.

(d) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual fee has been indicated by a Contracting Party is lower by at least 10 per cent than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Director General shall establish a new amount of the fee in Swiss currency according to the current official exchange rate of the United Nations. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount on the web site of the Organization.

(3) [*Crediting of Individual Fees to the Accounts of the Contracting Parties Concerned*] Any individual fee paid to the International Bureau in respect of a Contracting Party shall be credited to the account of that Contracting Party with the International Bureau within the month following the month in the course of which the recording of the international registration for which that fee has been paid was effected.

(4) [*Obligation to Use Swiss Currency*] All payments made under these Regulations to the International Bureau shall be in Swiss currency irrespective of the fact that, where the fees are paid through the Competent Authority, such Competent Authority may have collected those fees in another currency.

(5) [*Payment*] (a) Subject to subparagraph (b), the fees shall be paid directly to the International Bureau.

(b) The fees payable in connection with an application may be paid through the Competent Authority if the Competent Authority accepts to collect and forward such fees and the beneficiaries so wish. Any Competent Authority which accepts to collect and forward such fees shall notify that fact to the Director General.

(6) [*Modes of Payment*] Fees shall be paid to the International Bureau in accordance with the Administrative Instructions.

(7) [*Indications Accompanying the Payment*] At the time of the payment of any fee to the International Bureau, an indication must be given of the appellation of origin or the geographical indication concerned and the purpose of the payment.

(8) [*Date of Payment*] (a) Subject to subparagraph (b), any fee shall be considered to have been paid to the International Bureau on the day on which the International Bureau receives the required amount.

(b) Where the required amount is available in an account opened with the International Bureau and that Bureau has received instructions from the holder of the account to debit it, the fee shall be considered to have been paid to the International Bureau on the day on which the International Bureau receives an application or a request for the recording of a modification.

(9) [*Change in the Amount of the Fees*] Where the amount of any fee is changed, the amount valid on the date on which the fee was received by the International Bureau shall be applicable.

Chapter III

Refusal and Other Actions in Respect of International Registration

Rule 9

Refusal

(1) *[Notification to the International Bureau]* (a) A refusal shall be notified to the International Bureau by the Competent Authority of the concerned Contracting Party and shall be signed by that Competent Authority.

(b) The refusal shall be notified within a period of one year from the receipt of the notification of international registration under Article 6(4). In the case of Article 29(4), this time limit may be extended by another year.

(2) *[Contents of the Notification of Refusal]* A notification of refusal shall indicate or contain:

(i) the Competent Authority notifying the refusal;

(ii) the number of the relevant international registration, preferably accompanied by further information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication;

(iii) the grounds on which the refusal is based;

(iv) where the refusal is based on the existence of a prior right, as referred to in Article 13, the essential particulars of that prior right and, in particular, if it is constituted by a national, regional or international trademark application or registration, the date and number of such application or registration, the priority date (where appropriate), the name and address of the holder, a reproduction of the trademark, together with the list of relevant goods and services given in the trademark application or registration, it being understood that the list may be submitted in the language of the said application or registration;

(v) where the refusal concerns only certain elements of the appellation of origin, or the geographical indication, an indication of the elements that it concerns;

(vi) the judicial or administrative remedies available to contest the refusal, together with the applicable time limits.

(3) *[Entry in the International Register and Notifications by the International Bureau]* Subject to Rule 10(1), the International Bureau shall enter in the International Register any refusal, together with the date on which the notification of refusal was sent to the International Bureau, and shall communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 10

Irregular Notification of Refusal

(1) *[Declaration of Refusal Not Considered as Such]* (a) A notification of refusal shall not be considered as such by the International Bureau:

(i) if it does not indicate the number of the international registration concerned, unless other information given in the declaration enables the registration to be identified without ambiguity;

(ii) if it does not indicate any ground for refusal;

(iii) if it is sent to the International Bureau after the expiry of the relevant time limit referred to in Rule 9(1);

(iv) if it is not notified to the International Bureau by the Competent Authority.

(b) Where subparagraph (a) applies, the International Bureau shall inform the Competent Authority that submitted the notification of refusal that the refusal is not considered as such by the International Bureau and has not been entered in the International Register, shall state the reasons therefore and shall, unless it is unable to identify the international registration concerned, communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

(2) *[Irregular Declaration]* If the notification of refusal contains an irregularity other than those referred to in paragraph (1), the International Bureau shall nevertheless enter the refusal in the International Register and shall communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting party of Origin. At the request of that Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), the International Bureau shall invite the Competent Authority that submitted the notification of refusal to regularize the notification without delay.

Rule 11

Withdrawal of Refusal

(1) *[Notification to the International Bureau]* A refusal may be withdrawn, in part or in whole, at any time by the Competent Authority that notified it. The withdrawal of a refusal shall be notified to the International Bureau by the relevant Competent Authority and shall be signed by such authority.

(2) *[Contents of the Notification]* The notification of withdrawal of a refusal shall indicate:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication;

(ii) the reason for the withdrawal and, in case of a partial withdrawal, the particulars referred to in Rule 9(2)(v);

(iii) the date on which the refusal was withdrawn.

(3) *[Entry in the International Register and Notifications by the International Bureau]*
The International Bureau shall enter in the International Register any withdrawal referred to in paragraph (1) and shall communicate a copy of the notification of withdrawal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 12

Notification of Grant of Protection

(1) *[Optional Statement of Grant of Protection]* (a) A Competent Authority of a Contracting Party which does not refuse the effects of an international registration may, within the time limit referred to in Rule 9(1), send to the International Bureau a statement confirming that protection is granted to the appellation of origin, or the geographical indication, that is the subject of an international registration.

(b) The statement shall indicate:

(i) the Competent Authority of the Contracting Party making the statement;

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication; and

(iii) the date of the statement.

(2) *[Optional Statement of Grant of Protection Following a Refusal]* (a) Where a Competent Authority that has previously submitted a notification of refusal wishes to withdraw that refusal, it may, instead of notifying the withdrawal of refusal in accordance with Rule 11(1), send to the International Bureau a statement to the effect that protection is granted to the relevant appellation of origin or geographical indication.

(b) The statement shall indicate:

(i) the Competent Authority of the Contracting Party making the statement;

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be

confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(iii) the reason for the withdrawal and, in case of a grant of protection that amounts to a partial withdrawal of refusal, the particulars referred to in Rule 9(2)(v); and

(iv) the date on which protection was granted.

(3) *[Entry in the International Register and Notifications by the International Bureau]*

The International Bureau shall enter in the International Register any statement referred to in paragraphs (1) or (2) and communicate a copy of such statement to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 13

Notification of Invalidation of the Effects of an International Registration in a Contracting Party

(1) *[Notification of Invalidation to the International Bureau]* Where the effects of an international registration are invalidated in a Contracting Party, in whole or in part, and the invalidation is no longer subject to appeal, the Competent Authority of the concerned Contracting Party shall transmit to the International Bureau a notification of invalidation. The notification shall indicate or contain:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(ii) the authority that pronounced the invalidation;

(iii) the date on which the invalidation was pronounced;

(iv) where the invalidation is partial, the particulars referred to in Rule 9(2)(v);

(v) the grounds on the basis of which the invalidation was pronounced;

(vi) a copy of the decision that invalidated the effects of the international registration.

(2) *[Entry in the International Register and Notifications by the International Bureau]*

The International Bureau shall enter the invalidation in the International Register together with the particulars referred to in items (i) to (v) of paragraph (1) and shall communicate a copy of the notification to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 14

Notification of Transitional Period Granted to Third Parties

(1) *[Notification to the International Bureau]* Where a third party has been granted a defined period of time in which to terminate the use of a registered appellation of origin, or a registered geographical indication, in a Contracting Party, in accordance with Article 17(1), the Competent Authority of that Contracting Party shall notify the International Bureau accordingly. The notification shall indicate:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(ii) the identity of the third party concerned;

(iii) the period granted to the third party, preferably accompanied by information about the scope of the use during the transitional period;

(iv) the date from which the defined period begins, it being understood that the date may not be later than one year and three months from the receipt of the notification of international registration under Article 6(4) or, in the case of Article 29(4), no later than two years and three months from such receipt.

(2) *[Desirable Duration]* The duration of the period granted to a third party shall not be longer than 15 years, it being understood that the period may depend on the specific situation of each case and that a period longer than ten years would be exceptional.

(3) *[Entry in the International Register and Notifications by the International Bureau]* Subject to the notification referred to in paragraph (1) being sent by the Competent Authority to the International Bureau before the date referred to in paragraph (1)(iv), the International Bureau shall enter such notification in the International Register together with the particulars shown therein and shall communicate a copy of the notification to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 15

Modifications

(1) *[Permissible Modifications]* The following modifications may be recorded in the International Register:

(i) the addition or deletion of a beneficiary or some beneficiaries;

(ii) a modification of the names or addresses of the beneficiaries;

(iii) a modification of the limits of the geographical area of origin of the good or goods to which the appellation of origin, or the geographical indication, applies;

(iv) a modification relating to the legislative or administrative act, the judicial or administrative decision, or the registration referred to in Rule 5(2)(a)(vii);

(v) a modification relating to the Contracting Party of Origin that does not affect the geographical area of origin of the good or goods to which the appellation of origin, or the geographical indication, applies;

(vi) a modification under Rule 16.

(2) *[Procedure]* (a) A request for entry of a modification referred to in paragraph (1) shall be presented to the International Bureau by the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), and shall be accompanied by the fee specified in Rule 8.

(b) A request for entry of a modification referred to in paragraph (1) shall, where it concerns a newly established trans-border geographical area of origin, be presented to the International Bureau by the commonly designated Competent Authority.

(3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any modification requested in accordance with paragraphs (1) and (2) together with the date of receipt of the request by the International Bureau, confirm the entry to the Competent Authority that requested the modification, and communicate such modification to the Competent Authorities of the other Contracting Parties.

(4) *[Optional Alternative]* In the case of Article 5(3), paragraphs (1) to (3) shall apply *mutatis mutandis*, it being understood that a request from the beneficiaries or from the natural person or legal entity referred to in Article 5(2)(ii) must indicate that the change is requested because of a corresponding change to the registration, the legislative or administrative act, or the judicial or administrative decision, on the basis of which the appellation of origin, or the geographical indication, had been granted protection in the Contracting Party of Origin; and that the entry of the modification in the International Register shall be confirmed to the concerned beneficiaries or natural person or legal entity by the International Bureau, which shall also inform the Competent Authority of the Contracting Party of Origin.

Rule 16

Renunciation of Protection

- (1) *[Notification to the International Bureau]* The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time notify the International Bureau that protection of the appellation of origin, or the geographical indication, is renounced, in whole or in part, in respect of one or some of the Contracting Parties. The notification of renunciation of protection shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication.
- (2) *[Withdrawal of a Renunciation]* Any renunciation, including a renunciation under Rule 6(1)(d), may be withdrawn, in whole or in part, at any time by the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, subject to payment of the fee for a modification and, in the case of a renunciation under Rule 6(1)(d), the correction of the irregularity.
- (3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any renunciation of protection referred to in paragraph (1), or any withdrawal of a renunciation referred to in paragraph (2), confirm the entry to the Competent Authority of the Contracting Party of Origin and, in the case of Article 5(3), the beneficiaries or the natural person or legal entity, while also informing the Competent Authority of the Contracting Party of Origin, and shall communicate the entry of such modification in the International Register to the Competent Authorities of each Contracting Party to which the renunciation, or the withdrawal of the renunciation, relates.
- (4) *[Application of Rules 9 to 12]* The Competent Authority of a Contracting Party that receives a notification of the withdrawal of a renunciation may notify the International Bureau of the refusal of the effects of the international registration in its territory. The declaration shall be addressed to the International Bureau by such Competent Authority within a period of one year from the date of receipt of the notification by the International Bureau of the withdrawal of the renunciation. Rules 9 to 12 shall apply *mutatis mutandis*.

Rule 17

Cancellation of an International Registration

- (1) *[Request for Cancellation]* The request for cancellation shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication.
- (2) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any cancellation together with the particulars given in the request, confirm the entry to the Competent Authority of the

Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), while also informing the Competent Authority of the Contracting Party of Origin, and shall communicate the cancellation to the Competent Authorities of the other Contracting Parties.

Rule 18

Corrections Made to the International Register

- (1) *[Procedure]* If the International Bureau, acting *ex officio* or at the request of the Competent Authority of the Contracting Party of Origin, finds that the International Register contains an error with respect to an international registration, it shall correct the Register accordingly.
- (2) *[Optional Alternative]* In the case of Article 5(3), a request under paragraph (1) can also be submitted by the beneficiaries or by the natural person or legal entity referred to in Article 5(2)(ii). The beneficiaries or the natural person or legal entity shall be notified by the International Bureau of any correction concerning the international registration.
- (3) *[Notification of Corrections to the Competent Authorities]* The International Bureau shall notify any correction of the International Register to the Competent Authorities of all Contracting Parties as well as, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii).
- (4) *[Application of Rules 9 to 12]* Where the correction of an error concerns the appellation of origin or the geographical indication, or the good or goods to which the appellation of origin or the geographical indication applies, the Competent Authority of a Contracting Party has the right to declare that it cannot ensure the protection of the appellation of origin or geographical indication after the correction. The declaration shall be addressed to the International Bureau by such Competent Authority within a period of one year from the date of notification by the International Bureau of the correction. Rules 9 to 12 shall apply *mutatis mutandis*.

Chapter IV

Miscellaneous Provisions

Rule 19

Publication

The International Bureau shall publish all entries made in the International Register.

Rule 20Extracts from the International Register and Other Information
Provided by the International Bureau

- (1) *[Information on the Contents of the International Register]* Extracts from the International Register or any other information on the contents of the Register shall be provided by the International Bureau to any person so requesting, on payment of the fee specified in Rule 8.
- (2) *[Communication of Provisions, Decisions or the Registration Under Which an Appellation of Origin or a Geographical Indication Is Protected]* (a) Any person may request from the International Bureau a copy in the original language of the provisions, the decisions or the registration referred to in Rule 5(2)(a)(vii), on payment of the fee specified in Rule 8.
- (b) Where such documents have already been communicated to the International Bureau, the latter shall transmit without delay a copy to the person who has made the request.
- (c) If such a document has never been communicated to the International Bureau, the latter shall request a copy of it from the Competent Authority of the Contracting Party of Origin and shall transmit the document, on receipt, to the person who has made the request.

Rule 21

Signature

Where the signature of a Competent Authority is required under these Regulations, such signature may be printed or replaced by the affixing of a facsimile or an official seal.

Rule 22

Date of Dispatch of Various Communications

Where the notifications referred to in Rules 9(1), 14(1), 16(4) and 18(4) are communicated through a postal service, the date of dispatch shall be determined by the postmark. If the postmark is illegible or missing, the International Bureau shall treat the communication concerned as if it had been sent 20 days before the date on which it was received. Where such notifications are sent through a mail delivery service, the date of dispatch shall be determined by the information provided by such delivery service on the basis of the details of the mailing as recorded by it. Such notifications may also be communicated by facsimile or by electronic means, as provided for in the Administrative Instructions.

Rule 23

Modes of Notification by the International Bureau

- (1) *[Notification of the International Registration]* The notification of the international registration, referred to in Rule 7(3)(ii), or the notification of the withdrawal of a renunciation referred to in Rule 16(3), shall be addressed by the International Bureau to the Competent

Authority of each Contracting Party concerned by any means enabling the International Bureau to establish the date on which the notification was received, as provided for in the Administrative Instructions.

(2) *[Other Notifications]* Any other notification by the International Bureau referred to in these Regulations shall be addressed to the Competent Authorities by any means enabling the International Bureau to establish that the notification has been received.

Rule 24

Administrative Instructions

(1) *[Establishment of Administrative Instructions; Matters Governed by Them]* (a) The Director General shall establish Administrative Instructions and may modify them. Before establishing or modifying the Administrative Instructions, the Director General shall consult the Competent Authorities of the Contracting Parties which have direct interest in the proposed Administrative Instructions or their proposed modification.

(b) The Administrative Instructions shall deal with matters in respect of which these Regulations expressly refer to such Instructions and with details in respect of the application of these Regulations.

(2) *[Supervision by the Assembly]* The Assembly may invite the Director General to modify any provision of the Administrative Instructions and the Director General shall act upon any such invitation.

(3) *[Publication and Effective Date]* (a) The Administrative Instructions and any modification thereof shall be published.

(b) Each publication shall specify the date on which the published provisions become effective.

(4) *[Conflict with the Act or These Regulations]* In the case of conflict between, on the one hand, any provision of the Administrative Instructions and, on the other hand, any provision of the Act or these Regulations, the latter shall *prevail*.

LI/DC/16
MAY 20, 2015 (Original: English)

DRAFT GENEVA ACT OF THE LISBON AGREEMENT ON APPELLATIONS OF
ORIGIN AND GEOGRAPHICAL INDICATIONS AND DRAFT REGULATIONS UNDER
THE GENEVA ACT OF THE LISBON AGREEMENT ON APPELLATIONS OF ORIGIN
AND GEOGRAPHICAL INDICATIONS

Submitted to the Conference, meeting in Plenary, by Main Committees I and II

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Chapter I **Introductory and General Provisions**

Article 1 Abbreviated Expressions

For the purposes of this Act, unless expressly stated otherwise:

- (i) "Lisbon Agreement" means the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958;
- (ii) "1967 Act" means the Lisbon Agreement as revised at Stockholm on July 14, 1967, and amended on September 28, 1979;
- (iii) "this Act" means the Lisbon Agreement on Appellations of Origin and Geographical Indications, as established by the present Act;
- (iv) "Regulations" means the Regulations as referred to in Article 25;
- (v) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised and amended;
- (vi) "appellation of origin" means a denomination as referred to in Article 2(1)(i);
- (vii) "geographical indication" means an indication as referred to in Article 2(1)(ii);
- (viii) "International Register" means the International Register maintained by the International Bureau in accordance with Article 4 as the official collection of data concerning international registrations of appellations of origin and geographical indications, regardless of the medium in which such data are maintained;
- (ix) "international registration" means an international registration recorded in the International Register;
- (x) "application" means an application for international registration;
- (xi) "registered" means entered in the International Register in accordance with this Act;
- (xii) "geographical area of origin" means a geographical area as referred to in Article 2(2);
- (xiii) "trans-border geographical area" means a geographical area situated in, or covering, adjacent Contracting Parties;
- (xiv) "Contracting Party" means any State or intergovernmental organization party to this Act;

(xv) “Contracting Party of Origin” means the Contracting Party where the geographical area of origin is situated or the Contracting Parties where the trans-border geographical area of origin is situated;

(xvi) “Competent Authority” means an entity designated in accordance with Article 3;

(xvii) “beneficiaries” means the natural persons or legal entities entitled under the law of the Contracting Party of Origin to use an appellation of origin or a geographical indication;

(xviii) “intergovernmental organization” means an intergovernmental organization eligible to become party to this Act in accordance with Article 28(1)(iii);

(xix) “Organization” means the World Intellectual Property Organization;

(xx) “Director General” means the Director General of the Organization;

(xxi) “International Bureau” means the International Bureau of the Organization.

Article 2 Subject-Matter

(1) *[Appellations of Origin and Geographical Indications]* This Act applies in respect of:

(i) any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation; as well as

(ii) any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

(2) *[Possible Geographical Areas of Origin]* A geographical area of origin as described in paragraph (1) may consist of the entire territory of the Contracting Party of Origin or a region, locality or place in the Contracting Party of Origin. This does not exclude the application of this Act in respect of a geographical area of origin, as described in paragraph (1), consisting of a trans-border geographical area, or a part thereof.

Article 3
Competent Authority

Each Contracting Party shall designate an entity which shall be responsible for the administration of this Act in its territory and for communications with the International Bureau under this Act and the Regulations. The Contracting Party shall notify the name and contact details of such Competent Authority to the International Bureau, as specified in the Regulations.

Article 4
International Register

The International Bureau shall maintain an International Register recording international registrations effected under this Act, under the Lisbon Agreement and the 1967 Act, or under both, and data relating to such international registrations.

Chapter II
Application and International Registration

Article 5
Application

- (1) *[Place of Filing]* Applications shall be filed with the International Bureau.
- (2) *[Application Filed by Competent Authority]* Subject to paragraph (3), the application for the international registration of an appellation of origin or a geographical indication shall be filed by the Competent Authority in the name of:
- (i) the beneficiaries; or
 - (ii) a natural person or legal entity having legal standing under the law of the Contracting Party of Origin to assert the rights of the beneficiaries or other rights in the appellation of origin or geographical indication.
- (3) *[Application Filed Directly]* (a) Without prejudice to paragraph (4), if the legislation of the Contracting Party of Origin so permits, the application may be filed by the beneficiaries or by a natural person or legal entity referred to in paragraph (2)(ii).
- (b) Subparagraph (a) applies subject to a declaration from the Contracting Party that its legislation so permits. Such declaration may be made by the Contracting Party at the time of deposit of its instrument of ratification or accession or at any later time. Where the declaration is made at the time of the deposit of its instrument of ratification or accession, it shall take effect upon the entry into force of this Act with respect to that Contracting Party. Where the declaration is made after the entry into force of this Act with respect to the Contracting Party, it shall take effect three months after the date on which the Director General has received the declaration.

(4) *[Possible Joint Application in the Case of a Trans-border Geographical Area]* In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may, in accordance with their agreement, file an application jointly through a commonly designated Competent Authority.

(5) *[Mandatory Contents]* The Regulations shall specify the mandatory particulars that must be included in the application, in addition to those specified in Article 6(3).

(6) *[Optional Contents]* The Regulations may specify the optional particulars that may be included in the application.

Article 6

International Registration

(1) *[Formal Examination by the International Bureau]* Upon receipt of an application for the international registration of an appellation of origin or a geographical indication in due form, as specified in the Regulations, the International Bureau shall register the appellation of origin, or the geographical indication, in the International Register.

(2) *[Date of International Registration]* Subject to paragraph (3), the date of the international registration shall be the date on which the application was received by the International Bureau.

(3) *[Date of International Registration Where Particulars Missing]* Where the application does not contain all the following particulars:

(i) the identification of the Competent Authority or, in the case of Article 5(3), the applicant or applicants;

(ii) the details identifying the beneficiaries and, where applicable, the natural person or legal entity referred to in Article 5(2)(ii);

(iii) the appellation of origin, or the geographical indication, for which international registration is sought;

(iv) the good or goods to which the appellation of origin, or the geographical indication, applies;

the date of the international registration shall be the date on which the last of the missing particulars is received by the International Bureau.

(4) *[Publication and Notification of International Registrations]* The International Bureau shall, without delay, publish each international registration and notify the Competent Authority of each Contracting Party of the international registration.

(5) *[Date of Effect of International Registration]* (a) Subject to subparagraph (b), a registered appellation of origin or geographical indication shall, in each Contracting Party that has not refused protection in accordance with Article 15, or that has sent to the International

Bureau a notification of grant of protection in accordance with Article 18, be protected from the date of the international registration.

(b) A Contracting Party may, in a declaration, notify the Director General that, in accordance with its national or regional legislation, a registered appellation of origin or geographical indication is protected from a date that is mentioned in the declaration, which date shall however not be later than the date of expiry of the time limit for refusal specified in the Regulations in accordance with Article 15(1)(a).

Article 7

Fees

(1) [*International Registration Fee*] International registration of each appellation of origin, and each geographical indication, shall be subject to payment of the fee specified in the Regulations.

(2) [*Fees for Other Entries in the International Register*] The Regulations shall specify the fees to be paid in respect of other entries in the International Register and for the supply of extracts, attestations, or other information concerning the contents of the international registration.

(3) [*Fee Reductions*] Reduced fees shall be established by the Assembly in respect of certain international registrations of appellations of origin, and in respect of certain international registrations of geographical indications, in particular those in respect of which the Contracting Party of Origin is a developing country or a least-developed country.

(4) [*Individual Fee*] (a) Any Contracting Party may, in a declaration, notify the Director General that the protection resulting from international registration shall extend to it only if a fee is paid to cover its cost of substantive examination of the international registration. The amount of such individual fee shall be indicated in the declaration and can be changed in further declarations. The said amount may not be higher than the equivalent of the amount required under the national or regional legislation of the Contracting Party diminished by the savings resulting from the international procedure. Additionally, the Contracting Party may, in a declaration, notify the Director General that it requires an administrative fee relating to the use by the beneficiaries of the appellation of origin or the geographical indication in that Contracting Party.

(b) Non-payment of an individual fee shall, in accordance with the Regulations, have the effect that protection is renounced in respect of the Contracting Party requiring the fee.

Article 8

Period of Validity of International Registrations

(1) *[Dependency]* International registrations shall be valid indefinitely, on the understanding that the protection of a registered appellation of origin or geographical indication shall no longer be required if the denomination constituting the appellation of origin, or the indication constituting the geographical indication, is no longer protected in the Contracting Party of Origin.

(2) *[Cancellation]* (a) The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time request the International Bureau to cancel the international registration concerned.

(b) In case the denomination constituting a registered appellation of origin, or the indication constituting a registered geographical indication, is no longer protected in the Contracting Party of Origin, the Competent Authority of the Contracting Party of Origin shall request cancellation of the international registration.

Chapter III
Protection**Article 9**

Commitment to Protect

Each Contracting Party shall protect registered appellations of origin and geographical indications on its territory, within its own legal system and practice but in accordance with the terms of this Act, subject to any refusal, renunciation, invalidation or cancellation that may become effective with respect to its territory, and on the understanding that Contracting Parties that do not distinguish in their national or regional legislation as between appellations of origin and geographical indications shall not be required to introduce such a distinction into their national or regional legislation.

Article 10

Protection Under Laws of Contracting Parties or Other Instruments

(1) *[Form of Legal Protection]* Each Contracting Party shall be free to choose the type of legislation under which it establishes the protection stipulated in this Act, provided that such legislation meets the substantive requirements of this Act.

(2) *[Protection Under Other Instruments]* The provisions of this Act shall not in any way affect any other protection a Contracting Party may accord in respect of registered appellations of origin or registered geographical indications under its national or regional legislation, or under other international instruments.

(3) *[Relation to Other Instruments]* Nothing in this Act shall derogate from any obligations that Contracting Parties have to each other under any other international instruments, nor shall it prejudice any rights that a Contracting Party has under any other international instruments.

Article 11

Protection in Respect of Registered Appellations of Origin and Geographical Indications

(1) *[Content of Protection]* Subject to the provisions of this Act, in respect of a registered appellation of origin or a registered geographical indication, each Contracting Party shall provide the legal means to prevent:

(a) use of the appellation of origin or the geographical indication

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

(ii) in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies or services, if such use would indicate or suggest a connection between those goods or services and the beneficiaries of the appellation of origin or the geographical indication, and would be likely to damage their interests, or, where applicable, because of the reputation of the appellation of origin or geographical indication in the Contracting Party concerned, such use would be likely to impair or dilute in an unfair manner, or take unfair advantage of, that reputation;

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

(2) *[Content of Protection in Respect of Certain Uses]* Paragraph (1)(a) shall also apply to use of the appellation of origin or geographical indication amounting to its imitation, even if the true origin of the goods is indicated, or if the appellation of origin or the geographical indication is used in translated form or is accompanied by terms such as "style", "kind", "type", "make", "imitation", "method", "as produced in", "like", "similar" or the like¹⁸.

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

¹⁸ Agreed Statement concerning Article 11(2): For the purposes of this Act, it is understood that where certain elements of the denomination or indication constituting the appellation of origin or geographical indication have a generic character in the Contracting Party of Origin, their protection under this subparagraph shall not be required in the other Contracting Parties. For greater certainty, a refusal or invalidation of a trademark, or a finding of infringement, in the Contracting Parties under the terms of Article 11 cannot be based on the component that has a generic character.

Article 12

Protection Against Becoming Generic

Subject to the provisions of this Act, registered appellations of origin and registered geographical indications cannot be considered to have become generic¹⁹ in a Contracting Party.

Article 13

Safeguards in Respect of Other Rights

(1) *[Prior Trademark Rights]* The provisions of this Act shall not prejudice a prior trademark applied for or registered in good faith, or acquired through use in good faith, in a Contracting Party. Where the law of a Contracting Party provides a limited exception to the rights conferred by a trademark to the effect that such a prior trademark in certain circumstances may not entitle its owner to prevent a registered appellation of origin or geographical indication from being granted protection or used in that Contracting Party, protection of the registered appellation of origin or geographical indication shall not limit the rights conferred by that trademark in any other way.

(2) *[Personal Name Used in Business]* The provisions of this Act shall not prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

(3) *[Rights Based on a Plant Variety or Animal Breed Denomination]* The provisions of this Act shall not prejudice the right of any person to use a plant variety or animal breed denomination in the course of trade, except where such plant variety or animal breed denomination is used in such a manner as to mislead the public.

(4) *[Safeguards in the Case of Notification of Withdrawal of Refusal or a Grant of Protection]* Where a Contracting Party that has refused the effects of an international registration under Article 15 on the ground of use under a prior trademark or other right, as referred to in this Article, notifies the withdrawal of that refusal under Article 16 or a grant of protection under Article 18, the resulting protection of the appellation of origin or geographical indication shall not prejudice that right or its use, unless the protection was granted following the cancellation, non-renewal, revocation or invalidation of the right.

¹⁹ Agreed Statement concerning Article 12: For the purposes of this Act, it is understood that Article 12 is without prejudice to the application of the provisions of this Act concerning prior use, as, prior to international registration, the denomination or indication constituting the appellation of origin or geographical indication may already, in whole or in part, be generic in a Contracting Party other than the Contracting Party of Origin, for example, because the denomination or indication, or part of it, is identical with a term customary in common language as the common name of a good or service in such Contracting Party, or is identical with the customary name of a grape variety in such Contracting Party.

Article 14

Enforcement Procedures and Remedies

Each Contracting Party shall make available effective legal remedies for the protection of registered appellations of origin and registered geographical indications and provide that legal proceedings for ensuring their protection may be brought by a public authority or by any interested party, whether a natural person or a legal entity and whether public or private, depending on its legal system and practice.

Chapter IV**Refusal and Other Actions in Respect of International Registrations****Article 15**

Refusal

(1) *[Refusal of Effects of International Registration]* (a) Within the time limit specified in the Regulations, the Competent Authority of a Contracting Party may notify the International Bureau of the refusal of the effects of an international registration in its territory. The notification of refusal may be made by the Competent Authority *ex officio*, if its legislation so permits, or at the request of an interested party.

(b) The notification of refusal shall set out the grounds on which the refusal is based.

(2) *[Protection Under Other Instruments]* The notification of a refusal shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party to which the refusal relates.

(3) *[Obligation to Provide Opportunity for Interested Parties]* Each Contracting Party shall provide a reasonable opportunity, for anyone whose interests would be affected by an international registration, to request the Competent Authority to notify a refusal in respect of the international registration.

(4) *[Registration, Publication and Communication of Refusals]* The International Bureau shall record the refusal and the grounds for the refusal in the International Register. It shall publish the refusal and the grounds for the refusal and shall communicate the notification of refusal to the Competent Authority of the Contracting Party of Origin or, where the application has been filed directly in accordance with Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

(5) *[National Treatment]* Each Contracting Party shall make available to interested parties affected by a refusal the same judicial and administrative remedies that are available to its own nationals in respect of the refusal of protection for an appellation of origin or a geographical indication.

Article 16
Withdrawal of Refusal

A refusal may be withdrawn in accordance with the procedures specified in the Regulations. A withdrawal shall be recorded in the International Register.

Article 17
Transitional Period

(1) *[Option to Grant Transitional Period]* Without prejudice to Article 13, where a Contracting Party has not refused the effects of an international registration on the ground of prior use by a third party or has withdrawn such refusal or has notified a grant of protection, it may, if its legislation so permits, grant a defined period as specified in the Regulations, for terminating such use.

(2) *[Notification of a Transitional Period]* The Contracting Party shall notify the International Bureau of any such period, in accordance with the procedures specified in the Regulations.

Article 18
Notification of Grant of Protection

The Competent Authority of a Contracting Party may notify the International Bureau of the grant of protection to a registered appellation of origin or geographical indication. The International Bureau shall record any such notification in the International Register and publish it.

Article 19
Invalidation

(1) *[Opportunity to Defend Rights]* Invalidation of the effects, in part or in whole, of an international registration in the territory of a Contracting Party may be pronounced only after having given the beneficiaries an opportunity to defend their rights. Such opportunity shall also be given to the natural person or legal entity referred to in Article 5(2)(ii).

(2) *[Notification, Recordal and Publication]* The Contracting Party shall notify the invalidation of the effects of an international registration to the International Bureau, which shall record the invalidation in the International Register and publish it.

(3) *[Protection Under Other Instruments]* Invalidation shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party that invalidated the effects of the international registration.

Article 20

Modifications and Other Entries in the International Register

Procedures for the modification of international registrations and other entries in the International Register shall be specified in the Regulations.

Chapter V**Administrative Provisions****Article 21**

Membership of the Lisbon Union

The Contracting Parties shall be members of the same Special Union as the States party to the Lisbon Agreement or the 1967 Act, whether or not they are party to the Lisbon Agreement or the 1967 Act.

Article 22

Assembly of the Special Union

(1) *[Composition]* (a) The Contracting Parties shall be members of the same Assembly as the States party to the 1967 Act.

(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(c) Each delegation shall bear its own expenses.

(2) *[Tasks]* (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Act;

(ii) give directions to the Director General concerning the preparation of revision conferences referred to in Article 26(1), due account being taken of any comments made by those members of the Special Union which have not ratified or acceded to this Act;

(iii) amend the Regulations;

(iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him or her all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the biennial budget of the Special Union, and approve its final accounts;

- (vi) adopt the financial Regulations of the Special Union;
- (vii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Special Union;
- (viii) determine which States, intergovernmental and non-governmental organizations shall be admitted to its meetings as observers;
- (ix) adopt amendments to Articles 22 to 24 and 27;
- (x) take any other appropriate action to further the objectives of the Special Union and perform any other functions as are appropriate under this Act.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) [*Quorum*] (a) One-half of the members of the Assembly which have the right to vote on a given matter shall constitute a quorum for the purposes of the vote on that matter.

(b) Notwithstanding the provisions of subparagraph (a), if, in any session, the number of the members of the Assembly which are States, have the right to vote on a given matter and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States and have the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States, have the right to vote on the said matter and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(4) [*Taking Decisions in the Assembly*] (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

(ii) any Contracting Party that is an intergovernmental organization may vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Act. No such intergovernmental organization shall participate in the vote if any one of its member States exercises its right to vote, and *vice versa*.

(c) On matters concerning only States that are bound by the 1967 Act, Contracting Parties that are not bound by the 1967 Act shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.

(5) *[Majorities]* (a) Subject to Articles 25(2) and 27(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(6) *[Sessions]* (a) The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the members of the Assembly or on the Director General's own initiative.

(c) The agenda of each session shall be prepared by the Director General.

(7) *[Rules of Procedure]* The Assembly shall adopt its own rules of procedure.

Article 23

International Bureau

(1) *[Administrative Tasks]* (a) International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the Secretariat of the Assembly and of such committees and working groups as may have been established by the Assembly.

(c) The Director General shall be the Chief Executive of the Special Union and shall represent the Special Union.

(2) *[Role of the International Bureau in the Assembly and Other Meetings]* The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly. The Director General, or a staff member designated by him, shall be *ex officio* Secretary of such a body.

(3) *[Conferences]* (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with intergovernmental and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(4) *[Other Tasks]* The International Bureau shall carry out any other tasks assigned to it in relation to this Act.

Article 24 Finances

(1) *[Budget]* The income and expenses of the Special Union shall be reflected in the budget of the Organization in a fair and transparent manner.

(2) *[Sources of Financing of the Budget]* The income of the Special Union shall be derived from the following sources:

- (i) fees collected under Article 7(1) and (2);
- (ii) proceeds from the sale of, or royalties on, the publications of the International Bureau;
- (iii) gifts, bequests, and subventions;
- (iv) rent, investment revenue, and other, including miscellaneous, income;
- (v) special contributions of the Contracting Parties or any alternative source derived from the Contracting Parties or beneficiaries, or both, if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses, as decided by the Assembly.

(3) *[Fixing of Fees; Level of the Budget]* (a) The amounts of the fees referred to in paragraph (2) shall be fixed by the Assembly on the proposal of the Director General and shall be so fixed that, together with the income derived from other sources under paragraph (2), the revenue of the Special Union should, under normal circumstances, be sufficient to cover the expenses of the International Bureau for maintaining the international registration service.

(b) If the Program and Budget of the Organization is not adopted before the beginning of a new financial period, the authorization to the Director General to incur obligations and make payments shall be at the same level as it was in the previous financial period.

(4) *[Establishing the Special Contributions Referred to in Paragraph (2)(v)]* For the purpose of establishing its contribution, each Contracting Party shall belong to the same class as it belongs to in the context of the Paris Convention or, if it is not a Contracting Party of the Paris Convention, as it would belong to if it were a Contracting Party of the Paris Convention. Intergovernmental organizations shall be considered to belong to contribution class I (one), unless otherwise unanimously decided by the Assembly. The contribution shall be partially weighted according to the number of registrations originating in the Contracting Party, as decided by the Assembly.

(5) *[Working Capital Fund]* The Special Union shall have a working capital fund, which shall be constituted by payments made by way of advance by each member of the Special Union when the Special Union so decides. If the fund becomes insufficient, the Assembly may decide to increase it. The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General. Should the Special Union record a surplus of income over expenditure in any financial period, the Working Capital Fund advances may be repaid to each member proportionate to their initial payments upon proposal by the Director General and decision by the Assembly.

(6) *[Advances by Host State]* (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(7) *[Auditing of Accounts]* The auditing of the accounts shall be effected by one or more of the States members of the Special Union or by external auditors, as provided in the Financial Regulations of the Organization. They shall be designated, with their agreement, by the Assembly.

Article 25 **Regulations**

(1) *[Subject-Matter]* The details for carrying out this Act shall be established in the Regulations.

(2) *[Amendment of Certain Provisions of the Regulations]* (a) The Assembly may decide that certain provisions of the Regulations may be amended only by unanimity or only by a three-fourths majority.

(b) In order for the requirement of unanimity or a three-fourths majority no longer to apply in the future to the amendment of a provision of the Regulations, unanimity shall be required.

(c) In order for the requirement of unanimity or a three-fourths majority to apply in the future to the amendment of a provision of the Regulations, a three-fourths majority shall be required.

(3) *[Conflict Between This Act and the Regulations]* In the case of conflict between the provisions of this Act and those of the Regulations, the former shall prevail.

Chapter VI **Revision and Amendment**

Article 26 Revision

- (1) *[Revision Conferences]* This Act may be revised by Diplomatic Conferences of the Contracting Parties. The convocation of any Diplomatic Conference shall be decided by the Assembly.
- (2) *[Revision or Amendment of Certain Articles]* Articles 22 to 24 and 27 may be amended either by a revision conference or by the Assembly according to the provisions of Article 27.

Article 27 Amendment of Certain Articles by the Assembly

- (1) *[Proposals for Amendment]* (a) Proposals for the amendment of Articles 22 to 24, and the present Article, may be initiated by any Contracting Party or by the Director General.
- (b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.
- (2) *[Majorities]* Adoption of any amendment to the Articles referred to in paragraph (1) shall require a three-fourths majority, except that adoption of any amendment to Article 22, and to the present paragraph, shall require a four-fifths majority.
- (3) *[Entry into Force]* (a) Except where subparagraph (b) applies, any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of those Contracting Parties which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on that amendment.
- (b) Any amendment to Article 22(3) or (4) or to this subparagraph shall not enter into force if, within six months of its adoption by the Assembly, any Contracting Party notifies the Director General that it does not accept such amendment.
- (c) Any amendment which enters into force in accordance with the provisions of this paragraph shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

Chapter VII Final Provisions

Article 28 Becoming Party to This Act

- (1) *[Eligibility]* Subject to Article 29 and paragraphs (2) and (3) of the present Article,
- (i) any State which is party to the Paris Convention may sign and become party to this Act;
 - (ii) any other State member of the Organization may sign and become party to this Act if it declares that its legislation complies with the provisions of the Paris Convention concerning appellations of origin, geographical indications and trademarks;
 - (iii) any intergovernmental organization may sign and become party to this Act, provided that at least one member State of that intergovernmental organization is party to the Paris Convention and provided that the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Act and that, under the constituting treaty of the intergovernmental organization, legislation applies under which regional titles of protection can be obtained in respect of geographical indications.
- (2) *[Ratification or Accession]* Any State or intergovernmental organization referred to in paragraph (1) may deposit
- (i) an instrument of ratification, if it has signed this Act; or
 - (ii) an instrument of accession, if it has not signed this Act.
- (3) *[Effective Date of Deposit]* (a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.
- (b) The effective date of the deposit of the instrument of ratification or accession of any State that is a member State of an intergovernmental organization and in respect of which the protection of appellations of origin or geographical indications can only be obtained on the basis of legislation applying between the member States of the intergovernmental organization shall be the date on which the instrument of ratification or accession of that intergovernmental organization is deposited, if that date is later than the date on which the instrument of the said State has been deposited. However, this subparagraph does not apply with regard to States that are party to the Lisbon Agreement or the 1967 Act and shall be without prejudice to the application of Article 31 with regard to such States.

Article 29

Effective Date of Ratifications and Accessions

- (1) *[Instruments to Be Taken into Consideration]* For the purposes of this Article, only instruments of ratification or accession that are deposited by States or intergovernmental organizations referred to in Article 28(1) and that have an effective date according to Article 28(3) shall be taken into consideration.
- (2) *[Entry into Force of This Act]* This Act shall enter into force three months after five eligible parties referred to in Article 28 have deposited their instruments of ratification or accession.
- (3) *[Entry into Force of Ratifications and Accessions]* (a) Any State or intergovernmental organization that has deposited its instrument of ratification or accession three months or more before the date of entry into force of this Act shall become bound by this Act on the date of the entry into force of this Act.
- (b) Any other State or intergovernmental organization shall become bound by this Act three months after the date on which it has deposited its instrument of ratification or accession or at any later date indicated in that instrument.
- (4) *[International Registrations Effected Prior to Accession]* In the territory of the acceding State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies, the provisions of this Act shall apply in respect of appellations of origin and geographical indications already registered under this Act at the time the accession becomes effective, subject to Article 7(4) as well as the provisions of Chapter IV, which shall apply *mutatis mutandis*. The acceding State or intergovernmental organization may also specify, in a declaration attached to its instrument of ratification or accession, an extension of the time limit referred to in Article 15(1), and the periods referred to in Article 17, in accordance with the procedures specified in the Regulations in that respect.

Article 30

Prohibition of Reservations

No reservations to this Act are permitted.

Article 31

Application of the Lisbon Agreement and the 1967 Act

- (1) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act]* This Act alone shall be applicable as regards the mutual relations of States party to both this Act and the Lisbon Agreement or the 1967 Act. However, with regards to international registrations of appellations of origin effective under the Lisbon Agreement or the 1967 Act, the States shall accord no lower protection than is required by the Lisbon Agreement or the 1967 Act.

(2) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act and States Party to the Lisbon Agreement or the 1967 Act Without Being Party to This Act]* Any State party to both this Act and the Lisbon Agreement or the 1967 Act shall continue to apply the Lisbon Agreement or the 1967 Act, as the case may be, in its relations with States party to the Lisbon Agreement or the 1967 Act that are not party to this Act.

Article 32

Denunciation

(1) *[Notification]* Any Contracting Party may denounce this Act by notification addressed to the Director General.

(2) *[Effective Date]* Denunciation shall take effect one year after the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Act to any application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

Article 33

Languages of this Act; Signature

(1) *[Original Texts; Official Texts]* (a) This Act shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

2. Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) *[Time Limit for Signature]* This Act shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 34

Depositary

The Director General shall be the depositary of this Act.

DRAFT REGULATIONS UNDER THE GENEVA ACT OF THE LISBON AGREEMENT
ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONSContents

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Chapter I **Introductory and General Provisions**

Rule 1 Abbreviated Expressions

For the purposes of these Regulations, unless expressly stated otherwise:

- (i) abbreviated expressions defined in Article 1 shall have the same meaning in these Regulations;
- (ii) "Rule" refers to a rule of these Regulations;
- (iii) "Administrative Instructions" means the Administrative Instructions referred to in Rule 24;
- (iv) "Official Form" means a form drawn up by the International Bureau.

Rule 2 Calculation of Time Limits

- (1) *[Periods Expressed in Years]* A period expressed in years shall expire in the subsequent year on the same day and month as the day and month of the event from which the period starts to run, except that, where the event occurred on February 29, the period shall expire on February 28 of the subsequent year.
- (2) *[Periods Expressed in Months]* A period expressed in months shall expire in the relevant subsequent month on the same day as the day of the event from which the period starts to run, except that, where the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month.
- (3) *[Expiry on a Day Which Is Not a Working Day for the International Bureau or a Competent Authority]* If the period of a time limit applying to the International Bureau or a Competent Authority expires on a day which is not a working day for the International Bureau or a Competent Authority, the period shall, notwithstanding paragraphs (1) and (2), expire for the International Bureau or the Competent Authority, as the case may be, on the first subsequent working day.

Rule 3 Working Languages

- (1) *[Application]* The application shall be in English, French or Spanish.
- (2) *[Communications Subsequent to the International Application]* Any communication concerning an application or an international registration shall be in English, French or Spanish, at the choice of the Competent Authority concerned or, in the case of Article 5(3), at

the choice of the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii). Any translation needed for the purposes of these procedures shall be made by the International Bureau.

(3) [*Entries in the International Register and Publication*] Entries in the International Register and publication of such entries by the International Bureau shall be in English, French and Spanish. The translations needed for those purposes shall be made by the International Bureau. However, the International Bureau shall not translate the appellation of origin or the geographical indication.

(4) [*Transliteration of the Appellation of Origin or Geographical Indication*] Where the application contains a transliteration of the appellation of origin or the geographical indication in accordance with Rule 5(2)(b), the International Bureau shall not check whether the transliteration is correct.

Rule 4

Competent Authority

(1) [*Notification to the International Bureau*] Upon accession, each Contracting Party shall notify the International Bureau of the name and contact details of its Competent Authority, i.e. the authority it has designated to present applications and other notifications to, and receive notifications from, the International Bureau. In addition, such Competent Authority shall make available information on the applicable procedures in the Contracting Party for the enforcement of rights in appellations of origin and geographical indications.

(2) [*One Authority or Different Authorities*] The notification referred to in paragraph (1) shall, preferably, indicate a single Competent Authority. When a Contracting Party notifies different Competent Authorities, this notification shall clearly indicate their respective competence in respect of the presentation of applications to, and the receipt of notifications from, the International Bureau.

(3) [*Modifications*] Contracting Parties shall notify the International Bureau of any change in the particulars referred to in paragraph (1). However, the International Bureau may *ex officio* take cognizance of a change in the absence of a notification where it has clear indications that such a change has taken place.

Chapter II Application and International Registration

Rule 5 Requirements Concerning the Application

(1) *[Filing]* The application shall be filed with the International Bureau on the Official Form provided to that end and shall be signed by the Competent Authority presenting it or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii).

(2) *[Application – Mandatory Contents]* (a) The application shall indicate:

(i) the Contracting Party of Origin;

(ii) the Competent Authority presenting the application or, in the case of Article 5(3), details identifying the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii);

(iii) the beneficiaries, designated collectively or, where collective designation is not possible, by name, or the natural person or legal entity having legal standing under the law of the Contracting Party of Origin to assert the rights of the beneficiaries or other rights in the appellation of origin or the geographical indication;

(iv) the appellation of origin or the geographical indication for which registration is sought, in the official language of the Contracting Party of Origin or, where the Contracting Party of Origin has more than one official language, in the official language or languages in which the appellation of origin or the geographical indication is contained in the registration, act or decision, by virtue of which protection is granted in the Contracting Party of Origin²⁰;

(v) the good or goods to which the appellation of origin, or the geographical indication, applies, as precisely as possible;

(vi) the geographical area of origin or the geographical area of production of the good or goods;

(vii) the identifying details, including the date of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin.

(b) If they are not in Latin characters, the application shall include a transliteration of the names of the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), of the geographical area of origin, and of the appellation of origin or the

²⁰ The application of Rule 5(2)(a)(iv) and Rule 5(2)(b) is subject to the provisions of Rule 3(3) and (4).

geographical indication for which registration is sought. The transliteration shall use the phonetics of the language of the application¹.

(c) The application shall be accompanied by the registration fee and any other fees, as specified in Rule 8.

(3) *[Application – Particulars Concerning the Quality, Reputation or Characteristic(s)]*

(a) To the extent that a Contracting Party requires that, for the protection of a registered appellation of origin or geographical indication in its territory, the application further indicate particulars concerning, in the case of an appellation of origin, the quality or characteristics of the good and its connection with the geographical environment of the geographical area of production, and, in the case of a geographical indication, the quality, reputation or other characteristic of the good and its connection with the geographical area of origin, it shall notify that requirement to the Director General.

(b) In order to meet such a requirement, particulars as referred to in subparagraph (a) shall be provided in a working language, but they shall not be translated by the International Bureau.

(c) An application that is not in accordance with a requirement as notified by a Contracting Party under subparagraph (a) shall, subject to Rule 6, have the effect that protection is renounced in respect of that Contracting Party.

(4) *[Application – Signature and/or Intention to Use]* (a) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication the application be signed by a person having legal standing to assert the rights conferred by such protection, it shall notify that requirement to the Director General.

(b) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication the application be accompanied by a declaration of intention to use the registered appellation of origin or geographical indication in its territory or a declaration of intention to exercise control over the use by others of the registered appellation of origin or geographical indication in its territory, it shall notify that requirement to the Director General.

(c) An application that is not signed in accordance with subparagraph (a), or that is not accompanied by a declaration indicated in subparagraph (b), shall, subject to Rule 6, have the effect that protection is renounced in respect of the Contracting Party requiring such signature or declaration, as notified under subparagraphs (a) and (b).

(5) *[Application – Protection Not Claimed for Certain Elements of the Appellation of Origin or the Geographical Indication]* The application shall indicate whether or not, to the best knowledge of the applicant, the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin, specifies that protection is not granted for certain elements of the appellation of origin or the geographical indication. Any such elements shall be indicated in the application in a working language.

- (6) [*Application – Optional Contents*] The application may indicate or contain:
- (i) the addresses of the beneficiaries;
 - (ii) a declaration that protection is renounced in one or more Contracting Parties;
 - (iii) a copy in the original language of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin or the geographical indication in the Contracting Party of Origin;
 - (iv) a statement to the effect that protection is not claimed for certain elements, other than those referred to in paragraph (5) of the appellation of origin or the geographical indication.

Rule 6 Irregular Applications

(1) [*Examination of the Application and Correction of Irregularities*] (a) Subject to paragraph (2), if the International Bureau finds that an application does not satisfy the conditions set out in Rule 3(1) or Rule 5, it shall defer registration and invite the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), to remedy the irregularity found within a period of three months from the date on which the invitation was sent.

(b) If the irregularity found is not corrected within two months of the date of the invitation referred to in subparagraph (a), the International Bureau shall send a reminder of its invitation. The sending of such a reminder shall have no effect on the three-month period referred to in subparagraph (a).

(c) If the correction of the irregularity is not received by the International Bureau within the three-month period referred to in subparagraph (a), the application shall, subject to subparagraph (d), be rejected by the International Bureau, which shall inform the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority, accordingly.

(d) In the case of an irregularity with respect to a requirement based on a notification made under Rule 5(3) or (4), or on a declaration made under Article 7(4), if the correction of the irregularity is not received by the International Bureau within the three-month period referred to in subparagraph (a), the protection resulting from the international registration shall be considered to be renounced in the Contracting Party having made the notification or the declaration.

(e) Where, in accordance with subparagraph (c), the application is rejected, the International Bureau shall refund the fees paid in respect of the application, after deduction of an amount corresponding to half the registration fee referred to in Rule 8.

(2) *[Application Not Considered as Such]* If the application is not filed by the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), it shall not be considered as such by the International Bureau and shall be returned to the sender.

Rule 7

Entry in the International Register

(1) *[Registration]* (a) Where the International Bureau finds that the application satisfies the conditions set out in Rules 3(1) and 5, it shall enter the appellation of origin or the geographical indication in the International Register.

(b) Where the application is also governed by the Lisbon Agreement or the 1967 Act, the International Bureau shall enter the appellation of origin in the International Register if it finds that the application satisfies the conditions set out in Rules 3(1) and 5 of the Regulations that apply in respect of the Lisbon Agreement or the 1967 Act.

(c) The International Bureau shall indicate per Contracting Party whether the international registration is governed by this Act or by the Lisbon Agreement or the 1967 Act.

(2) *[Contents of the Registration]* The international registration shall contain or indicate:

- (i) all the particulars given in the application;
- (ii) the language in which the International Bureau received the application;
- (iii) the number of the international registration;
- (iv) the date of the international registration.

(3) *[Certificate and Notification]* The International Bureau shall:

(i) send a certificate of international registration to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), to the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) that requested the registration; and

(ii) notify the international registration to the Competent Authority of each Contracting Party.

(4) *[Implementation of Article 31(1)]* (a) In case of the ratification of, or accession to, this Act by a State that is party to the Lisbon Agreement or the 1967 Act, Rule 5(2) to (4) shall apply *mutatis mutandis* with regard to international registrations or appellations of origin effective under the Lisbon Agreement or the 1967 Act in respect of that State. The International Bureau shall verify with the Competent Authority concerned any modifications to be made, in view of the requirements of Rules 3(1) and 5(2) to (4), for the purpose of their registration under this Act and notify international registrations thus effected to all other Contracting Parties. Modifications shall be subject to payment of the fee specified in Rule 8(1)(ii).

(b) Any declaration of refusal or notification of invalidation issued by a Contracting Party that is also party to the Lisbon Agreement or the 1967 Act shall remain effective under this Act, unless the Contracting Party notifies a withdrawal of refusal under Article 16 or a grant of protection under Article 18.

(c) Where subparagraph (b) does not apply, any Contracting Party that is also party to the Lisbon Agreement or the 1967 Act shall, upon receipt of a notification under subparagraph (a), continue to protect the appellation of origin concerned thenceforth also under this Act, unless the Contracting Party indicates otherwise. Any period granted under Article 5(6) of the Lisbon Agreement or the 1967 Act and still effective at the time the notification under subparagraph (a) is received shall, for its remainder, be subject to the provisions of Article 17.

Rule 8 Fees

(1) [*Amount of Fees*] The International Bureau shall collect the following fees²¹, payable in Swiss francs:

- (i) fee for international registration ...
- (ii) fee for each modification of an international registration ...
- (iii) fee for providing an extract from the International Register ...
- (iv) fee for providing an attestation or any other written information concerning the contents of the International Register ...
- (v) individual fees as referred to in paragraph (2) ...

(2) [*Establishment of the Amount of Individual Fees*] (a) Where a Contracting Party makes a declaration as referred to in Article 7(4) that it wants to receive an individual fee, as referred to in that provision, the amount of such fee shall be indicated in the currency used by the Competent Authority.

(b) Where the fee is indicated in the declaration referred to in subparagraph (a) in a currency other than Swiss currency, the Director General shall, after consultation with the Competent Authority of the Contracting Party, establish the amount of the fee in Swiss currency on the basis of the official exchange rate of the United Nations.

(c) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual fee has been indicated by a Contracting Party is higher or lower by at least 5 per cent than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Competent Authority of that Contracting Party may ask the Director General to establish a new amount of the fee in Swiss currency according to the official exchange rate of the United Nations prevailing on the day preceding the day on which the request is made. The

²¹ The amounts of the fees are to be decided by the Assembly.

Director General shall proceed accordingly. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount on the website of the Organization.

(d) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual fee has been indicated by a Contracting Party is lower by at least 10 per cent than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Director General shall establish a new amount of the fee in Swiss currency according to the current official exchange rate of the United Nations. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount on the web site of the Organization.

(3) [*Crediting of Individual Fees to the Accounts of the Contracting Parties Concerned*] Any individual fee paid to the International Bureau in respect of a Contracting Party shall be credited to the account of that Contracting Party with the International Bureau within the month following the month in the course of which the recording of the international registration for which that fee has been paid was effected.

(4) [*Obligation to Use Swiss Currency*] All payments made under these Regulations to the International Bureau shall be in Swiss currency irrespective of the fact that, where the fees are paid through the Competent Authority, such Competent Authority may have collected those fees in another currency.

(5) [*Payment*] (a) Subject to subparagraph (b), the fees shall be paid directly to the International Bureau.

(b) The fees payable in connection with an application may be paid through the Competent Authority if the Competent Authority accepts to collect and forward such fees and the beneficiaries so wish. Any Competent Authority which accepts to collect and forward such fees shall notify that fact to the Director General.

(6) [*Modes of Payment*] Fees shall be paid to the International Bureau in accordance with the Administrative Instructions.

(7) [*Indications Accompanying the Payment*] At the time of the payment of any fee to the International Bureau, an indication must be given of the appellation of origin or the geographical indication concerned and the purpose of the payment.

(8) [*Date of Payment*] (a) Subject to subparagraph (b), any fee shall be considered to have been paid to the International Bureau on the day on which the International Bureau receives the required amount.

(b) Where the required amount is available in an account opened with the International Bureau and that Bureau has received instructions from the holder of the account to debit it, the fee shall be considered to have been paid to the International Bureau on the day on which the International Bureau receives an application or a request for the recording of a modification.

(9) [*Change in the Amount of the Fees*] Where the amount of any fee is changed, the amount valid on the date on which the fee was received by the International Bureau shall be applicable.

Chapter III

Refusal and Other Actions in Respect of International Registration

Rule 9

Refusal

(1) [*Notification to the International Bureau*] (a) A refusal shall be notified to the International Bureau by the Competent Authority of the concerned Contracting Party and shall be signed by that Competent Authority.

(b) The refusal shall be notified within a period of one year from the receipt of the notification of international registration under Article 6(4). In the case of Article 29(4), this time limit may be extended by another year.

(2) [*Contents of the Notification of Refusal*] A notification of refusal shall indicate or contain:

- (i) the Competent Authority notifying the refusal;
- (ii) the number of the relevant international registration, preferably accompanied by further information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication;
- (iii) the grounds on which the refusal is based;
- (iv) where the refusal is based on the existence of a prior right, as referred to in Article 13, the essential particulars of that prior right and, in particular, if it is constituted by a national, regional or international trademark application or registration, the date and number of such application or registration, the priority date (where appropriate), the name and address of the holder, a reproduction of the trademark, together with the list of relevant goods and services given in the trademark application or registration, it being understood that the list may be submitted in the language of the said application or registration;
- (v) where the refusal concerns only certain elements of the appellation of origin, or the geographical indication, an indication of the elements that it concerns;
- (vi) the judicial or administrative remedies available to contest the refusal, together with the applicable time limits.

(3) [*Entry in the International Register and Notifications by the International Bureau*] Subject to Rule 10(1), the International Bureau shall enter in the International Register any refusal, together with the date on which the notification of refusal was sent to the International

Bureau, and shall communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 10

Irregular Notification of Refusal

(1) *[Declaration of Refusal Not Considered as Such]* (a) A notification of refusal shall not be considered as such by the International Bureau:

(i) if it does not indicate the number of the international registration concerned, unless other information given in the declaration enables the registration to be identified without ambiguity;

(ii) if it does not indicate any ground for refusal;

(iii) if it is sent to the International Bureau after the expiry of the relevant time limit referred to in Rule 9(1);

(iv) if it is not notified to the International Bureau by the Competent Authority.

(b) Where subparagraph (a) applies, the International Bureau shall inform the Competent Authority that submitted the notification of refusal that the refusal is not considered as such by the International Bureau and has not been entered in the International Register, shall state the reasons therefore and shall, unless it is unable to identify the international registration concerned, communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

(2) *[Irregular Declaration]* If the notification of refusal contains an irregularity other than those referred to in paragraph (1), the International Bureau shall nevertheless enter the refusal in the International Register and shall communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting party of Origin. At the request of that Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), the International Bureau shall invite the Competent Authority that submitted the notification of refusal to regularize the notification without delay.

Rule 11

Withdrawal of Refusal

- (1) *[Notification to the International Bureau]* A refusal may be withdrawn, in part or in whole, at any time by the Competent Authority that notified it. The withdrawal of a refusal shall be notified to the International Bureau by the relevant Competent Authority and shall be signed by such authority.
- (2) *[Contents of the Notification]* The notification of withdrawal of a refusal shall indicate:
- (i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication;
 - (ii) the reason for the withdrawal and, in case of a partial withdrawal, the particulars referred to in Rule 9(2)(v);
 - (iii) the date on which the refusal was withdrawn.

(3) *[Entry in the International Register and Notifications by the International Bureau]* The International Bureau shall enter in the International Register any withdrawal referred to in paragraph (1) and shall communicate a copy of the notification of withdrawal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 12

Notification of Grant of Protection

- (1) *[Optional Statement of Grant of Protection]* (a) A Competent Authority of a Contracting Party which does not refuse the effects of an international registration may, within the time limit referred to in Rule 9(1), send to the International Bureau a statement confirming that protection is granted to the appellation of origin, or the geographical indication, that is the subject of an international registration.
- (b) The statement shall indicate:
- (i) the Competent Authority of the Contracting Party making the statement;
 - (ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication; and
 - (iii) the date of the statement.

(2) *[Optional Statement of Grant of Protection Following a Refusal]* (a) Where a Competent Authority that has previously submitted a notification of refusal wishes to withdraw that refusal, it may, instead of notifying the withdrawal of refusal in accordance with Rule 11(1), send to the International Bureau a statement to the effect that protection is granted to the relevant appellation of origin or geographical indication.

(b) The statement shall indicate:

- (i) the Competent Authority of the Contracting Party making the statement;
- (ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;
- (iii) the reason for the withdrawal and, in case of a grant of protection that amounts to a partial withdrawal of refusal, the particulars referred to in Rule 9(2)(v); and
- (iv) the date on which protection was granted.

(3) *[Entry in the International Register and Notifications by the International Bureau]* The International Bureau shall enter in the International Register any statement referred to in paragraphs (1) or (2) and communicate a copy of such statement to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 13

Notification of Invalidation of the Effects of an International Registration in a Contracting Party

(1) *[Notification of Invalidation to the International Bureau]* Where the effects of an international registration are invalidated in a Contracting Party, in whole or in part, and the invalidation is no longer subject to appeal, the Competent Authority of the concerned Contracting Party shall transmit to the International Bureau a notification of invalidation. The notification shall indicate or contain:

- (i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;
- (ii) the authority that pronounced the invalidation;
- (iii) the date on which the invalidation was pronounced;
- (iv) where the invalidation is partial, the particulars referred to in Rule 9(2)(v);
- (v) the grounds on the basis of which the invalidation was pronounced;

(vi) a copy of the decision that invalidated the effects of the international registration.

(2) *[Entry in the International Register and Notifications by the International Bureau]* The International Bureau shall enter the invalidation in the International Register together with the particulars referred to in items (i) to (v) of paragraph (1) and shall communicate a copy of the notification to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 14

Notification of Transitional Period Granted to Third Parties

(1) *[Notification to the International Bureau]* Where a third party has been granted a defined period of time in which to terminate the use of a registered appellation of origin, or a registered geographical indication, in a Contracting Party, in accordance with Article 17(1), the Competent Authority of that Contracting Party shall notify the International Bureau accordingly. The notification shall indicate:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(ii) the identity of the third party concerned;

(iii) the period granted to the third party, preferably accompanied by information about the scope of the use during the transitional period;

(iv) the date from which the defined period begins, it being understood that the date may not be later than one year and three months from the receipt of the notification of international registration under Article 6(4) or, in the case of Article 29(4), no later than two years and three months from such receipt.

(2) *[Desirable Duration]* The duration of the period granted to a third party shall not be longer than 15 years, it being understood that the period may depend on the specific situation of each case and that a period longer than ten years would be exceptional.

(3) *[Entry in the International Register and Notifications by the International Bureau]* Subject to the notification referred to in paragraph (1) being sent by the Competent Authority to the International Bureau before the date referred to in paragraph (1)(iv), the International Bureau shall enter such notification in the International Register together with the particulars shown therein and shall communicate a copy of the notification to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 15
Modifications

(1) *[Permissible Modifications]* The following modifications may be recorded in the International Register:

- (i) the addition or deletion of a beneficiary or some beneficiaries;
- (ii) a modification of the names or addresses of the beneficiaries;
- (iii) a modification of the limits of the geographical area of origin of the good or goods to which the appellation of origin, or the geographical indication, applies;
- (iv) a modification relating to the legislative or administrative act, the judicial or administrative decision, or the registration referred to in Rule 5(2)(a)(vii);
- (v) a modification relating to the Contracting Party of Origin that does not affect the geographical area of origin of the good or goods to which the appellation of origin, or the geographical indication, applies;
- (vi) a modification under Rule 16.

(2) *[Procedure]* (a) A request for entry of a modification referred to in paragraph (1) shall be presented to the International Bureau by the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), and shall be accompanied by the fee specified in Rule 8.

(b) A request for entry of a modification referred to in paragraph (1) shall, where it concerns a newly established trans-border geographical area of origin, be presented to the International Bureau by the commonly designated Competent Authority.

(3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any modification requested in accordance with paragraphs (1) and (2) together with the date of receipt of the request by the International Bureau, confirm the entry to the Competent Authority that requested the modification, and communicate such modification to the Competent Authorities of the other Contracting Parties.

(4) *[Optional Alternative]* In the case of Article 5(3), paragraphs (1) to (3) shall apply *mutatis mutandis*, it being understood that a request from the beneficiaries or from the natural person or legal entity referred to in Article 5(2)(ii) must indicate that the change is requested because of a corresponding change to the registration, the legislative or administrative act, or the judicial or administrative decision, on the basis of which the appellation of origin, or the geographical indication, had been granted protection in the Contracting Party of Origin; and that the entry of the modification in the International Register shall be confirmed to the concerned beneficiaries or natural person or legal entity by the International Bureau, which shall also inform the Competent Authority of the Contracting Party of Origin.

Rule 16

Renunciation of Protection

- (1) *[Notification to the International Bureau]* The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time notify the International Bureau that protection of the appellation of origin, or the geographical indication, is renounced, in whole or in part, in respect of one or some of the Contracting Parties. The notification of renunciation of protection shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication.
- (2) *[Withdrawal of a Renunciation]* Any renunciation, including a renunciation under Rule 6(1)(d), may be withdrawn, in whole or in part, at any time by the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, subject to payment of the fee for a modification and, in the case of a renunciation under Rule 6(1)(d), the correction of the irregularity.
- (3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any renunciation of protection referred to in paragraph (1), or any withdrawal of a renunciation referred to in paragraph (2), confirm the entry to the Competent Authority of the Contracting Party of Origin and, in the case of Article 5(3), the beneficiaries or the natural person or legal entity, while also informing the Competent Authority of the Contracting Party of Origin, and shall communicate the entry of such modification in the International Register to the Competent Authorities of each Contracting Party to which the renunciation, or the withdrawal of the renunciation, relates.
- (4) *[Application of Rules 9 to 12]* The Competent Authority of a Contracting Party that receives a notification of the withdrawal of a renunciation may notify the International Bureau of the refusal of the effects of the international registration in its territory. The declaration shall be addressed to the International Bureau by such Competent Authority within a period of one year from the date of receipt of the notification by the International Bureau of the withdrawal of the renunciation. Rules 9 to 12 shall apply *mutatis mutandis*.

Rule 17

Cancellation of an International Registration

- (1) *[Request for Cancellation]* The request for cancellation shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication.
- (2) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any cancellation together with the particulars given in the request, confirm the entry to the Competent Authority of the

Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), while also informing the Competent Authority of the Contracting Party of Origin, and shall communicate the cancellation to the Competent Authorities of the other Contracting Parties.

Rule 18

Corrections Made to the International Register

- (1) *[Procedure]* If the International Bureau, acting *ex officio* or at the request of the Competent Authority of the Contracting Party of Origin, finds that the International Register contains an error with respect to an international registration, it shall correct the Register accordingly.
- (2) *[Optional Alternative]* In the case of Article 5(3), a request under paragraph (1) can also be submitted by the beneficiaries or by the natural person or legal entity referred to in Article 5(2)(ii). The beneficiaries or the natural person or legal entity shall be notified by the International Bureau of any correction concerning the international registration.
- (3) *[Notification of Corrections to the Competent Authorities]* The International Bureau shall notify any correction of the International Register to the Competent Authorities of all Contracting Parties as well as, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii).
- (4) *[Application of Rules 9 to 12]* Where the correction of an error concerns the appellation of origin or the geographical indication, or the good or goods to which the appellation of origin or the geographical indication applies, the Competent Authority of a Contracting Party has the right to declare that it cannot ensure the protection of the appellation of origin or geographical indication after the correction. The declaration shall be addressed to the International Bureau by such Competent Authority within a period of one year from the date of notification by the International Bureau of the correction. Rules 9 to 12 shall apply *mutatis mutandis*.

Chapter IV

Miscellaneous Provisions

Rule 19

Publication

The International Bureau shall publish all entries made in the International Register.

Rule 20Extracts from the International Register and Other Information
Provided by the International Bureau

- (1) *[Information on the Contents of the International Register]* Extracts from the International Register or any other information on the contents of the Register shall be provided by the International Bureau to any person so requesting, on payment of the fee specified in Rule 8.
- (2) *[Communication of Provisions, Decisions or the Registration Under Which an Appellation of Origin or a Geographical Indication Is Protected]* (a) Any person may request from the International Bureau a copy in the original language of the provisions, the decisions or the registration referred to in Rule 5(2)(a)(vii), on payment of the fee specified in Rule 8.
- (b) Where such documents have already been communicated to the International Bureau, the latter shall transmit without delay a copy to the person who has made the request.
- (c) If such a document has never been communicated to the International Bureau, the latter shall request a copy of it from the Competent Authority of the Contracting Party of Origin and shall transmit the document, on receipt, to the person who has made the request.

Rule 21

Signature

Where the signature of a Competent Authority is required under these Regulations, such signature may be printed or replaced by the affixing of a facsimile or an official seal.

Rule 22

Date of Dispatch of Various Communications

Where the notifications referred to in Rules 9(1), 14(1), 16(4) and 18(4) are communicated through a postal service, the date of dispatch shall be determined by the postmark. If the postmark is illegible or missing, the International Bureau shall treat the communication concerned as if it had been sent 20 days before the date on which it was received. Where such notifications are sent through a mail delivery service, the date of dispatch shall be determined by the information provided by such delivery service on the basis of the details of the mailing as recorded by it. Such notifications may also be communicated by facsimile or by electronic means, as provided for in the Administrative Instructions.

Rule 23

Modes of Notification by the International Bureau

- (1) *[Notification of the International Registration]* The notification of the international registration, referred to in Rule 7(3)(ii), or the notification of the withdrawal of a renunciation referred to in Rule 16(3), shall be addressed by the International Bureau to the Competent

Authority of each Contracting Party concerned by any means enabling the International Bureau to establish the date on which the notification was received, as provided for in the Administrative Instructions.

(2) *[Other Notifications]* Any other notification by the International Bureau referred to in these Regulations shall be addressed to the Competent Authorities by any means enabling the International Bureau to establish that the notification has been received.

Rule 24

Administrative Instructions

(1) *[Establishment of Administrative Instructions; Matters Governed by Them]* (a) The Director General shall establish Administrative Instructions and may modify them. Before establishing or modifying the Administrative Instructions, the Director General shall consult the Competent Authorities of the Contracting Parties which have direct interest in the proposed Administrative Instructions or their proposed modification.

(b) The Administrative Instructions shall deal with matters in respect of which these Regulations expressly refer to such Instructions and with details in respect of the application of these Regulations.

(2) *[Supervision by the Assembly]* The Assembly may invite the Director General to modify any provision of the Administrative Instructions and the Director General shall act upon any such invitation.

(3) *[Publication and Effective Date]* (a) The Administrative Instructions and any modification thereof shall be published.

(b) Each publication shall specify the date on which the published provisions become effective.

(4) *[Conflict with the Act or These Regulations]* In the case of conflict between, on the one hand, any provision of the Administrative Instructions and, on the other hand, any provision of the Act or these Regulations, the latter shall prevail.

LI/DC/17 REV.

May 20, 2015 (Original: English)

REPORT OF THE PRESIDENT OF THE CREDENTIALS COMMITTEE

prepared by the Secretariat

1. Since the meetings of the Credentials Committee on May 13 and 15, 2015 (see documents LI/DC/10 and 12), the full powers of the Delegations of France and Gabon have been received.
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LI/DC/19
May 20, 2015 (Original: English)

GENEVA ACT OF THE LISBON AGREEMENT ON APPELLATIONS OF ORIGIN AND
GEOGRAPHICAL INDICATIONS AND REGULATIONS UNDER THE GENEVA ACT
OF THE LISBON AGREEMENT ON APPELLATIONS OF ORIGIN AND
GEOGRAPHICAL INDICATIONS

Adopted by the Diplomatic Conference on May 20, 2015

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Chapter I
Introductory and General Provisions

Article 1
Abbreviated Expressions

For the purposes of this Act, unless expressly stated otherwise:

(i) "Lisbon Agreement" means the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958;

(ii) "1967 Act" means the Lisbon Agreement as revised at Stockholm on July 14, 1967, and amended on September 28, 1979;

(iii) "this Act" means the Lisbon Agreement on Appellations of Origin and Geographical Indications, as established by the present Act;

(iv) "Regulations" means the Regulations as referred to in Article 25;

(v) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised and amended;

(vi) "appellation of origin" means a denomination as referred to in Article 2(1)(i);

(vii) "geographical indication" means an indication as referred to in Article 2(1)(ii);

(viii) "International Register" means the International Register maintained by the International Bureau in accordance with Article 4 as the official collection of data concerning international registrations of appellations of origin and geographical indications, regardless of the medium in which such data are maintained;

(ix) "international registration" means an international registration recorded in the International Register;

(x) "application" means an application for international registration;

(xi) "registered" means entered in the International Register in accordance with this Act;

(xii) "geographical area of origin" means a geographical area as referred to in Article 2(2);

(xiii) "trans-border geographical area" means a geographical area situated in, or covering, adjacent Contracting Parties;

(xiv) "Contracting Party" means any State or intergovernmental organization party to this Act;

(xv) "Contracting Party of Origin" means the Contracting Party where the geographical area of origin is situated or the Contracting Parties where the trans-border geographical area of origin is situated;

(xvi) "Competent Authority" means an entity designated in accordance with Article 3;

(xvii) "beneficiaries" means the natural persons or legal entities entitled under the law of the Contracting Party of Origin to use an appellation of origin or a geographical indication;

(xviii) "intergovernmental organization" means an intergovernmental organization eligible to become party to this Act in accordance with Article 28(1)(iii);

(xix) "Organization" means the World Intellectual Property Organization;

(xx) "Director General" means the Director General of the Organization;

(xxi) "International Bureau" means the International Bureau of the Organization.

Article 2 Subject-Matter

(1) *[Appellations of Origin and Geographical Indications]* This Act applies in respect of:

(i) any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation; as well as

(ii) any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

(2) *[Possible Geographical Areas of Origin]* A geographical area of origin as described in paragraph (1) may consist of the entire territory of the Contracting Party of Origin or a region, locality or place in the Contracting Party of Origin. This does not exclude the application of this Act in respect of a geographical area of origin, as described in paragraph (1), consisting of a trans-border geographical area, or a part thereof.

Article 3
Competent Authority

Each Contracting Party shall designate an entity which shall be responsible for the administration of this Act in its territory and for communications with the International Bureau under this Act and the Regulations. The Contracting Party shall notify the name and contact details of such Competent Authority to the International Bureau, as specified in the Regulations.

Article 4
International Register

The International Bureau shall maintain an International Register recording international registrations effected under this Act, under the Lisbon Agreement and the 1967 Act, or under both, and data relating to such international registrations.

Chapter II
Application and International Registration

Article 5
Application

- (1) *[Place of Filing]* Applications shall be filed with the International Bureau.
- (2) *[Application Filed by Competent Authority]* Subject to paragraph (3), the application for the international registration of an appellation of origin or a geographical indication shall be filed by the Competent Authority in the name of:
- (i) the beneficiaries; or
 - (ii) a natural person or legal entity having legal standing under the law of the Contracting Party of Origin to assert the rights of the beneficiaries or other rights in the appellation of origin or geographical indication.
- (3) *[Application Filed Directly]* (a) Without prejudice to paragraph (4), if the legislation of the Contracting Party of Origin so permits, the application may be filed by the beneficiaries or by a natural person or legal entity referred to in paragraph (2)(ii).
- (b) Subparagraph (a) applies subject to a declaration from the Contracting Party that its legislation so permits. Such declaration may be made by the Contracting Party at the time of deposit of its instrument of ratification or accession or at any later time. Where the declaration is made at the time of the deposit of its instrument of ratification or accession, it shall take effect upon the entry into force of this Act with respect to that Contracting Party. Where the declaration is made after the entry into force of this Act with respect to the Contracting Party, it shall take effect three months after the date on which the Director General has received the declaration.

(4) *[Possible Joint Application in the Case of a Trans-border Geographical Area]* In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may, in accordance with their agreement, file an application jointly through a commonly designated Competent Authority.

(5) *[Mandatory Contents]* The Regulations shall specify the mandatory particulars that must be included in the application, in addition to those specified in Article 6(3).

(6) *[Optional Contents]* The Regulations may specify the optional particulars that may be included in the application.

Article 6

International Registration

(1) *[Formal Examination by the International Bureau]* Upon receipt of an application for the international registration of an appellation of origin or a geographical indication in due form, as specified in the Regulations, the International Bureau shall register the appellation of origin, or the geographical indication, in the International Register.

(2) *[Date of International Registration]* Subject to paragraph (3), the date of the international registration shall be the date on which the application was received by the International Bureau.

(3) *[Date of International Registration Where Particulars Missing]* Where the application does not contain all the following particulars:

(i) the identification of the Competent Authority or, in the case of Article 5(3), the applicant or applicants;

(ii) the details identifying the beneficiaries and, where applicable, the natural person or legal entity referred to in Article 5(2)(ii);

(iii) the appellation of origin, or the geographical indication, for which international registration is sought;

(iv) the good or goods to which the appellation of origin, or the geographical indication, applies;

the date of the international registration shall be the date on which the last of the missing particulars is received by the International Bureau.

(4) *[Publication and Notification of International Registrations]* The International Bureau shall, without delay, publish each international registration and notify the Competent Authority of each Contracting Party of the international registration.

(5) *[Date of Effect of International Registration]* (a) Subject to subparagraph (b), a registered appellation of origin or geographical indication shall, in each Contracting Party that has not refused protection in accordance with Article 15, or that has sent to the International Bureau a notification of grant of protection in accordance with Article 18, be protected from the date of the international registration.

(b) A Contracting Party may, in a declaration, notify the Director General that, in accordance with its national or regional legislation, a registered appellation of origin or geographical indication is protected from a date that is mentioned in the declaration, which date shall however not be later than the date of expiry of the time limit for refusal specified in the Regulations in accordance with Article 15(1)(a).

Article 7

Fees

(1) *[International Registration Fee]* International registration of each appellation of origin, and each geographical indication, shall be subject to payment of the fee specified in the Regulations.

(2) *[Fees for Other Entries in the International Register]* The Regulations shall specify the fees to be paid in respect of other entries in the International Register and for the supply of extracts, attestations, or other information concerning the contents of the international registration.

(3) *[Fee Reductions]* Reduced fees shall be established by the Assembly in respect of certain international registrations of appellations of origin, and in respect of certain international registrations of geographical indications, in particular those in respect of which the Contracting Party of Origin is a developing country or a least-developed country.

(4) *[Individual Fee]* (a) Any Contracting Party may, in a declaration, notify the Director General that the protection resulting from international registration shall extend to it only if a fee is paid to cover its cost of substantive examination of the international registration. The amount of such individual fee shall be indicated in the declaration and can be changed in further declarations. The said amount may not be higher than the equivalent of the amount required under the national or regional legislation of the Contracting Party diminished by the savings resulting from the international procedure. Additionally, the Contracting Party may, in a declaration, notify the Director General that it requires an administrative fee relating to the use by the beneficiaries of the appellation of origin or the geographical indication in that Contracting Party.

(b) Non-payment of an individual fee shall, in accordance with the Regulations, have the effect that protection is renounced in respect of the Contracting Party requiring the fee.

Article 8

Period of Validity of International Registrations

(1) *[Dependency]* International registrations shall be valid indefinitely, on the understanding that the protection of a registered appellation of origin or geographical indication shall no longer be required if the denomination constituting the appellation of origin, or the indication constituting the geographical indication, is no longer protected in the Contracting Party of Origin.

(2) *[Cancellation]* (a) The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time request the International Bureau to cancel the international registration concerned.

(b) In case the denomination constituting a registered appellation of origin, or the indication constituting a registered geographical indication, is no longer protected in the Contracting Party of Origin, the Competent Authority of the Contracting Party of Origin shall request cancellation of the international registration.

Chapter III
Protection**Article 9**

Commitment to Protect

Each Contracting Party shall protect registered appellations of origin and geographical indications on its territory, within its own legal system and practice but in accordance with the terms of this Act, subject to any refusal, renunciation, invalidation or cancellation that may become effective with respect to its territory, and on the understanding that Contracting Parties that do not distinguish in their national or regional legislation as between appellations of origin and geographical indications shall not be required to introduce such a distinction into their national or regional legislation.

Article 10

Protection Under Laws of Contracting Parties or Other Instruments

(1) *[Form of Legal Protection]* Each Contracting Party shall be free to choose the type of legislation under which it establishes the protection stipulated in this Act, provided that such legislation meets the substantive requirements of this Act.

(2) *[Protection Under Other Instruments]* The provisions of this Act shall not in any way affect any other protection a Contracting Party may accord in respect of registered appellations of origin or registered geographical indications under its national or regional legislation, or under other international instruments.

(3) *[Relation to Other Instruments]* Nothing in this Act shall derogate from any obligations that Contracting Parties have to each other under any other international instruments, nor shall it prejudice any rights that a Contracting Party has under any other international instruments.

Article 11

Protection in Respect of Registered Appellations of Origin and Geographical Indications

(1) *[Content of Protection]* Subject to the provisions of this Act, in respect of a registered appellation of origin or a registered geographical indication, each Contracting Party shall provide the legal means to prevent:

(a) Use of the appellation of origin or the geographical indication

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

(ii) in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies or services, if such use would indicate or suggest a connection between those goods or services and the beneficiaries of the appellation of origin or the geographical indication, and would be likely to damage their interests, or, where applicable, because of the reputation of the appellation of origin or geographical indication in the Contracting Party concerned, such use would be likely to impair or dilute in an unfair manner, or take unfair advantage of, that reputation;

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

(2) *[Content of Protection in Respect of Certain Uses]* Paragraph (1)(a) shall also apply to use of the appellation of origin or geographical indication amounting to its imitation, even if the true origin of the goods is indicated, or if the appellation of origin or the geographical indication is used in translated form or is accompanied by terms such as "style", "kind", "type", "make", "imitation", "method", "as produced in", "like", "similar" or the like²².

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

²² Agreed Statement concerning Article 11(2): For the purposes of this Act, it is understood that where certain elements of the denomination or indication constituting the appellation of origin or geographical indication have a generic character in the Contracting Party of Origin, their protection under this subparagraph shall not be required in the other Contracting Parties. For greater certainty, a refusal or invalidation of a trademark, or a finding of infringement, in the Contracting Parties under the terms of Article 11 cannot be based on the component that has a generic character.

Article 12

Protection Against Becoming Generic

Subject to the provisions of this Act, registered appellations of origin and registered geographical indications cannot be considered to have become generic²³ in a Contracting Party.

Article 13

Safeguards in Respect of Other Rights

(1) *[Prior Trademark Rights]* The provisions of this Act shall not prejudice a prior trademark applied for or registered in good faith, or acquired through use in good faith, in a Contracting Party. Where the law of a Contracting Party provides a limited exception to the rights conferred by a trademark to the effect that such a prior trademark in certain circumstances may not entitle its owner to prevent a registered appellation of origin or geographical indication from being granted protection or used in that Contracting Party, protection of the registered appellation of origin or geographical indication shall not limit the rights conferred by that trademark in any other way.

(2) *[Personal Name Used in Business]* The provisions of this Act shall not prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

(3) *[Rights Based on a Plant Variety or Animal Breed Denomination]* The provisions of this Act shall not prejudice the right of any person to use a plant variety or animal breed denomination in the course of trade, except where such plant variety or animal breed denomination is used in such a manner as to mislead the public.

(4) *[Safeguards in the Case of Notification of Withdrawal of Refusal or a Grant of Protection]* Where a Contracting Party that has refused the effects of an international registration under Article 15 on the ground of use under a prior trademark or other right, as referred to in this Article, notifies the withdrawal of that refusal under Article 16 or a grant of protection under Article 18, the resulting protection of the appellation of origin or geographical indication shall not prejudice that right or its use, unless the protection was granted following the cancellation, non-renewal, revocation or invalidation of the right.

²³ Agreed Statement concerning Article 12: For the purposes of this Act, it is understood that Article 12 is without prejudice to the application of the provisions of this Act concerning prior use, as, prior to international registration, the denomination or indication constituting the appellation of origin or geographical indication may already, in whole or in part, be generic in a Contracting Party other than the Contracting Party of Origin, for example, because the denomination or indication, or part of it, is identical with a term customary in common language as the common name of a good or service in such Contracting Party, or is identical with the customary name of a grape variety in such Contracting Party.

Article 14

Enforcement Procedures and Remedies

Each Contracting Party shall make available effective legal remedies for the protection of registered appellations of origin and registered geographical indications and provide that legal proceedings for ensuring their protection may be brought by a public authority or by any interested party, whether a natural person or a legal entity and whether public or private, depending on its legal system and practice.

Chapter IV**Refusal and Other Actions in Respect of International Registrations****Article 15**

Refusal

- (1) *[Refusal of Effects of International Registration]* (a) Within the time limit specified in the Regulations, the Competent Authority of a Contracting Party may notify the International Bureau of the refusal of the effects of an international registration in its territory. The notification of refusal may be made by the Competent Authority *ex officio*, if its legislation so permits, or at the request of an interested party.
- (b) The notification of refusal shall set out the grounds on which the refusal is based.
- (2) *[Protection Under Other Instruments]* The notification of a refusal shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party to which the refusal relates.
- (3) *[Obligation to Provide Opportunity for Interested Parties]* Each Contracting Party shall provide a reasonable opportunity, for anyone whose interests would be affected by an international registration, to request the Competent Authority to notify a refusal in respect of the international registration.
- (4) *[Registration, Publication and Communication of Refusals]* The International Bureau shall record the refusal and the grounds for the refusal in the International Register. It shall publish the refusal and the grounds for the refusal and shall communicate the notification of refusal to the Competent Authority of the Contracting Party of Origin or, where the application has been filed directly in accordance with Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.
- (5) *[National Treatment]* Each Contracting Party shall make available to interested parties affected by a refusal the same judicial and administrative remedies that are available to its own nationals in respect of the refusal of protection for an appellation of origin or a geographical indication.

Article 16
Withdrawal of Refusal

A refusal may be withdrawn in accordance with the procedures specified in the Regulations. A withdrawal shall be recorded in the International Register.

Article 17
Transitional Period

(1) *[Option to Grant Transitional Period]* Without prejudice to Article 13, where a Contracting Party has not refused the effects of an international registration on the ground of prior use by a third party or has withdrawn such refusal or has notified a grant of protection, it may, if its legislation so permits, grant a defined period as specified in the Regulations, for terminating such use.

(2) *[Notification of a Transitional Period]* The Contracting Party shall notify the International Bureau of any such period, in accordance with the procedures specified in the Regulations.

Article 18
Notification of Grant of Protection

The Competent Authority of a Contracting Party may notify the International Bureau of the grant of protection to a registered appellation of origin or geographical indication. The International Bureau shall record any such notification in the International Register and publish it.

Article 19
Invalidation

(1) *[Opportunity to Defend Rights]* Invalidation of the effects, in part or in whole, of an international registration in the territory of a Contracting Party may be pronounced only after having given the beneficiaries an opportunity to defend their rights. Such opportunity shall also be given to the natural person or legal entity referred to in Article 5(2)(ii).

(2) *[Notification, Recordal and Publication]* The Contracting Party shall notify the invalidation of the effects of an international registration to the International Bureau, which shall record the invalidation in the International Register and publish it.

(3) *[Protection Under Other Instruments]* Invalidation shall not be detrimental to any other protection that may be available, in accordance with Article 10(2), to the denomination or indication concerned in the Contracting Party that invalidated the effects of the international registration.

Article 20

Modifications and Other Entries in the International Register

Procedures for the modification of international registrations and other entries in the International Register shall be specified in the Regulations.

Chapter V**Administrative Provisions****Article 21**

Membership of the Lisbon Union

The Contracting Parties shall be members of the same Special Union as the States party to the Lisbon Agreement or the 1967 Act, whether or not they are party to the Lisbon Agreement or the 1967 Act.

Article 22

Assembly of the Special Union

(1) *[Composition]* (a) The Contracting Parties shall be members of the same Assembly as the States party to the 1967 Act.

(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(c) Each delegation shall bear its own expenses.

(2) *[Tasks]* (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Act;

(ii) give directions to the Director General concerning the preparation of revision conferences referred to in Article 26(1), due account being taken of any comments made by those members of the Special Union which have not ratified or acceded to this Act;

(iii) amend the Regulations;

(iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him or her all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the biennial budget of the Special Union, and approve its final accounts;

- (vi) adopt the financial Regulations of the Special Union;
- (vii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Special Union;
- (viii) determine which States, intergovernmental and non-governmental organizations shall be admitted to its meetings as observers;
- (ix) adopt amendments to Articles 22 to 24 and 27;
- (x) take any other appropriate action to further the objectives of the Special Union and perform any other functions as are appropriate under this Act.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) [*Quorum*] (a) One-half of the members of the Assembly which have the right to vote on a given matter shall constitute a quorum for the purposes of the vote on that matter.

(b) Notwithstanding the provisions of subparagraph (a), if, in any session, the number of the members of the Assembly which are States, have the right to vote on a given matter and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States and have the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States have the right to vote on the said matter and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(4) [*Taking Decisions in the Assembly*] (a) The Assembly shall endeavor to take its decisions by consensus.

(b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,

(i) each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

(ii) any Contracting Party that is an intergovernmental organization may vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Act. No such intergovernmental organization shall participate in the vote if any one of its member States exercises its right to vote, and *vice versa*.

(c) On matters concerning only States that are bound by the 1967 Act, Contracting Parties that are not bound by the 1967 Act shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.

(5) *[Majorities]* (a) Subject to Articles 25(2) and 27(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(6) *[Sessions]* (a) The Assembly shall meet upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the members of the Assembly or on the Director General's own initiative.

(c) The agenda of each session shall be prepared by the Director General.

(7) *[Rules of Procedure]* The Assembly shall adopt its own rules of procedure.

Article 23

International Bureau

(1) *[Administrative Tasks]* (a) International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the Secretariat of the Assembly and of such committees and working groups as may have been established by the Assembly.

(c) The Director General shall be the Chief Executive of the Special Union and shall represent the Special Union.

(2) *[Role of the International Bureau in the Assembly and Other Meetings]* The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly. The Director General, or a staff member designated by him, shall be *ex officio* Secretary of such a body.

(3) *[Conferences]* (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.

(b) The International Bureau may consult with intergovernmental and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(4) *[Other Tasks]* The International Bureau shall carry out any other tasks assigned to it in relation to this Act.

Article 24 Finances

(1) *[Budget]* The income and expenses of the Special Union shall be reflected in the budget of the Organization in a fair and transparent manner.

(2) *[Sources of Financing of the Budget]* The income of the Special Union shall be derived from the following sources:

- (i) fees collected under Article 7(1) and (2);
- (ii) proceeds from the sale of, or royalties on, the publications of the International Bureau;
- (iii) gifts, bequests, and subventions;
- (iv) rent, investment revenue, and other, including miscellaneous, income;
- (v) special contributions of the Contracting Parties or any alternative source derived from the Contracting Parties or beneficiaries, or both, if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses, as decided by the Assembly.

(3) *[Fixing of Fees; Level of the Budget]* (a) The amounts of the fees referred to in paragraph (2) shall be fixed by the Assembly on the proposal of the Director General and shall be so fixed that, together with the income derived from other sources under paragraph (2), the revenue of the Special Union should, under normal circumstances, be sufficient to cover the expenses of the International Bureau for maintaining the international registration service.

(b) If the Program and Budget of the Organization is not adopted before the beginning of a new financial period, the authorization to the Director General to incur obligations and make payments shall be at the same level as it was in the previous financial period.

(4) *[Establishing the Special Contributions Referred to in Paragraph (2)(v)]* For the purpose of establishing its contribution, each Contracting Party shall belong to the same class as it belongs to in the context of the Paris Convention or, if it is not a Contracting Party of the Paris Convention, as it would belong to if it were a Contracting Party of the Paris Convention. Intergovernmental organizations shall be considered to belong to contribution class I (one), unless otherwise unanimously decided by the Assembly. The contribution shall be partially weighted according to the number of registrations originating in the Contracting Party, as decided by the Assembly.

(5) *[Working Capital Fund]* The Special Union shall have a working capital fund, which shall be constituted by payments made by way of advance by each member of the Special Union when the Special Union so decides. If the fund becomes insufficient, the Assembly may decide to increase it. The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General. Should the Special Union record a surplus of income over expenditure in any financial period, the Working Capital Fund advances may be repaid to each member proportionate to their initial payments upon proposal by the Director General and decision by the Assembly.

(6) *[Advances by Host State]* (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(7) *[Auditing of Accounts]* The auditing of the accounts shall be effected by one or more of the States members of the Special Union or by external auditors, as provided in the Financial Regulations of the Organization. They shall be designated, with their agreement, by the Assembly.

Article 25 **Regulations**

(1) *[Subject-Matter]* The details for carrying out this Act shall be established in the Regulations.

(2) *[Amendment of Certain Provisions of the Regulations]* (a) The Assembly may decide that certain provisions of the Regulations may be amended only by unanimity or only by a three-fourths majority.

(b) In order for the requirement of unanimity or a three-fourths majority no longer to apply in the future to the amendment of a provision of the Regulations, unanimity shall be required.

(c) In order for the requirement of unanimity or a three-fourths majority to apply in the future to the amendment of a provision of the Regulations, a three-fourths majority shall be required.

(3) *[Conflict Between This Act and the Regulations]* In the case of conflict between the provisions of this Act and those of the Regulations, the former shall prevail.

Chapter VI **Revision and Amendment**

Article 26 Revision

- (1) *[Revision Conferences]* This Act may be revised by Diplomatic Conferences of the Contracting Parties. The convocation of any Diplomatic Conference shall be decided by the Assembly.
- (2) *[Revision or Amendment of Certain Articles]* Articles 22 to 24 and 27 may be amended either by a revision conference or by the Assembly according to the provisions of Article 27.

Article 27 Amendment of Certain Articles by the Assembly

- (1) *[Proposals for Amendment]* (a) Proposals for the amendment of Articles 22 to 24, and the present Article, may be initiated by any Contracting Party or by the Director General.
- (b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.
- (2) *[Majorities]* Adoption of any amendment to the Articles referred to in paragraph (1) shall require a three-fourths majority, except that adoption of any amendment to Article 22, and to the present paragraph, shall require a four-fifths majority.
- (3) *[Entry into Force]* (a) Except where subparagraph (b) applies, any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of those Contracting Parties which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on that amendment.
- (b) Any amendment to Article 22(3) or (4) or to this subparagraph shall not enter into force if, within six months of its adoption by the Assembly, any Contracting Party notifies the Director General that it does not accept such amendment.
- (c) Any amendment which enters into force in accordance with the provisions of this paragraph shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

Chapter VII Final Provisions

Article 28 Becoming Party to This Act

- (1) *[Eligibility]* Subject to Article 29 and paragraphs (2) and (3) of the present Article,
- (i) any State which is party to the Paris Convention may sign and become party to this Act;
 - (ii) any other State member of the Organization may sign and become party to this Act if it declares that its legislation complies with the provisions of the Paris Convention concerning appellations of origin, geographical indications and trademarks;
 - (iii) any intergovernmental organization may sign and become party to this Act, provided that at least one member State of that intergovernmental organization is party to the Paris Convention and provided that the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Act and that, under the constituting treaty of the intergovernmental organization, legislation applies under which regional titles of protection can be obtained in respect of geographical indications.
- (2) *[Ratification or Accession]* Any State or intergovernmental organization referred to in paragraph (1) may deposit:
- (i) an instrument of ratification, if it has signed this Act; or
 - (ii) an instrument of accession, if it has not signed this Act.
- (3) *[Effective Date of Deposit]* (a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.
- (b) The effective date of the deposit of the instrument of ratification or accession of any State that is a member State of an intergovernmental organization and in respect of which the protection of appellations of origin or geographical indications can only be obtained on the basis of legislation applying between the member States of the intergovernmental organization shall be the date on which the instrument of ratification or accession of that intergovernmental organization is deposited, if that date is later than the date on which the instrument of the said State has been deposited. However, this subparagraph does not apply with regard to States that are party to the Lisbon Agreement or the 1967 Act and shall be without prejudice to the application of Article 31 with regard to such States.

Article 29

Effective Date of Ratifications and Accessions

- (1) *[Instruments to Be Taken into Consideration]* For the purposes of this Article, only instruments of ratification or accession that are deposited by States or intergovernmental organizations referred to in Article 28(1) and that have an effective date according to Article 28(3) shall be taken into consideration.
- (2) *[Entry into Force of This Act]* This Act shall enter into force three months after five eligible parties referred to in Article 28 have deposited their instruments of ratification or accession.
- (3) *[Entry into Force of Ratifications and Accessions]* (a) Any State or intergovernmental organization that has deposited its instrument of ratification or accession three months or more before the date of entry into force of this Act shall become bound by this Act on the date of the entry into force of this Act.
- (b) Any other State or intergovernmental organization shall become bound by this Act three months after the date on which it has deposited its instrument of ratification or accession or at any later date indicated in that instrument.
- (4) *[International Registrations Effected Prior to Accession]* In the territory of the acceding State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies, the provisions of this Act shall apply in respect of appellations of origin and geographical indications already registered under this Act at the time the accession becomes effective, subject to Article 7(4) as well as the provisions of Chapter IV, which shall apply *mutatis mutandis*. The acceding State or intergovernmental organization may also specify, in a declaration attached to its instrument of ratification or accession, an extension of the time limit referred to in Article 15(1), and the periods referred to in Article 17, in accordance with the procedures specified in the Regulations in that respect.

Article 30

Prohibition of Reservations

No reservations to this Act are permitted.

Article 31

Application of the Lisbon Agreement and the 1967 Act

- (1) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act]* This Act alone shall be applicable as regards the mutual relations of States party to both this Act and the Lisbon Agreement or the 1967 Act. However, with regard to international registrations of appellations of origin effective under the Lisbon Agreement or the 1967 Act, the States shall accord no lower protection than is required by the Lisbon Agreement or the 1967 Act.

(2) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act and States Party to the Lisbon Agreement or the 1967 Act Without Being Party to This Act]* Any State party to both this Act and the Lisbon Agreement or the 1967 Act shall continue to apply the Lisbon Agreement or the 1967 Act, as the case may be, in its relations with States party to the Lisbon Agreement or the 1967 Act that are not party to this Act.

Article 32 Denunciation

(1) *[Notification]* Any Contracting Party may denounce this Act by notification addressed to the Director General.

(2) *[Effective Date]* Denunciation shall take effect one year after the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Act to any application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

Article 33 Languages of this Act; Signature

(1) *[Original Texts; Official Texts]* (a) This Act shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) *[Time Limit for Signature]* This Act shall remain open for signature at the headquarters of the Organization for one year after its adoption.

Article 34 Depositary

The Director General shall be the depositary of this Act.

REGULATIONS UNDER THE GENEVA ACT OF THE LISBON AGREEMENT ON
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Chapter I **Introductory and General Provisions**

Rule 1 Abbreviated Expressions

For the purposes of these Regulations, unless expressly stated otherwise:

- (i) abbreviated expressions defined in Article 1 shall have the same meaning in these Regulations;
- (ii) "Rule" refers to a rule of these Regulations;
- (iii) "Administrative Instructions" means the Administrative Instructions referred to in Rule 24;
- (iv) "Official Form" means a form drawn up by the International Bureau.

Rule 2 Calculation of Time Limits

- (1) *[Periods Expressed in Years]* A period expressed in years shall expire in the subsequent year on the same day and month as the day and month of the event from which the period starts to run, except that, where the event occurred on February 29, the period shall expire on February 28 of the subsequent year.
- (2) *[Periods Expressed in Months]* A period expressed in months shall expire in the relevant subsequent month on the same day as the day of the event from which the period starts to run, except that, where the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month.
- (3) *[Expiry on a Day Which Is Not a Working Day for the International Bureau or a Competent Authority]* If the period of a time limit applying to the International Bureau or a Competent Authority expires on a day which is not a working day for the International Bureau or a Competent Authority, the period shall, notwithstanding paragraphs (1) and (2), expire for the International Bureau or the Competent Authority, as the case may be, on the first subsequent working day.

Rule 3 Working Languages

- (1) *[Application]* The application shall be in English, French or Spanish.
- (2) *[Communications Subsequent to the International Application]* Any communication concerning an application or an international registration shall be in English, French or Spanish, at the choice of the Competent Authority concerned or, in the case of Article 5(3), at the choice of the beneficiaries or the natural person or legal entity referred to in

Article 5(2)(ii). Any translation needed for the purposes of these procedures shall be made by the International Bureau.

(3) [*Entries in the International Register and Publication*] Entries in the International Register and publication of such entries by the International Bureau shall be in English, French and Spanish. The translations needed for those purposes shall be made by the International Bureau. However, the International Bureau shall not translate the appellation of origin or the geographical indication.

(4) [*Transliteration of the Appellation of Origin or Geographical Indication*] Where the application contains a transliteration of the appellation of origin or the geographical indication in accordance with Rule 5(2)(b), the International Bureau shall not check whether the transliteration is correct.

Rule 4

Competent Authority

(1) [*Notification to the International Bureau*] Upon accession, each Contracting Party shall notify the International Bureau of the name and contact details of its Competent Authority, i.e. the authority it has designated to present applications and other notifications to, and receive notifications from, the International Bureau. In addition, such Competent Authority shall make available information on the applicable procedures in the Contracting Party for the enforcement of rights in appellations of origin and geographical indications.

(2) [*One Authority or Different Authorities*] The notification referred to in paragraph (1) shall, preferably, indicate a single Competent Authority. When a Contracting Party notifies different Competent Authorities, this notification shall clearly indicate their respective competence in respect of the presentation of applications to, and the receipt of notifications from, the International Bureau.

(3) [*Modifications*] Contracting Parties shall notify the International Bureau of any change in the particulars referred to in paragraph (1). However, the International Bureau may *ex officio* take cognizance of a change in the absence of a notification where it has clear indications that such a change has taken place.

Chapter II

Application and International Registration

Rule 5

Requirements Concerning the Application

(1) [*Filing*] The application shall be filed with the International Bureau on the Official Form provided to that end and shall be signed by the Competent Authority presenting it or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii).

(2) [*Application – Mandatory Contents*] (a) The application shall indicate:

- (i) the Contracting Party of Origin;
- (ii) the Competent Authority presenting the application or, in the case of Article 5(3), details identifying the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii);
- (iii) the beneficiaries, designated collectively or, where collective designation is not possible, by name, or the natural person or legal entity having legal standing under the law of the Contracting Party of Origin to assert the rights of the beneficiaries or other rights in the appellation of origin or the geographical indication;
- (iv) the appellation of origin or the geographical indication for which registration is sought, in the official language of the Contracting Party of Origin or, where the Contracting Party of Origin has more than one official language, in the official language or languages in which the appellation of origin or the geographical indication is contained in the registration, act or decision, by virtue of which protection is granted in the Contracting Party of Origin²⁴;
- (v) the good or goods to which the appellation of origin, or the geographical indication, applies, as precisely as possible;
- (vi) the geographical area of origin or the geographical area of production of the good or goods;
- (vii) the identifying details, including the date of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin.

(b) If they are not in Latin characters, the application shall include a transliteration of the names of the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), of the geographical area of origin, and of the appellation of origin or the geographical indication for which registration is sought. The transliteration shall use the phonetics of the language of the application²⁴.

(c) The application shall be accompanied by the registration fee and any other fees, as specified in Rule 8.

(3) [*Application – Particulars Concerning the Quality, Reputation or Characteristic(s)*] (a) To the extent that a Contracting Party requires that, for the protection of a registered appellation of origin or geographical indication in its territory, the application further indicate particulars concerning, in the case of an appellation of origin, the quality or characteristics of the good and its connection with the geographical environment of the geographical area of production, and, in the case of a geographical indication, the quality, reputation or other

²⁴ The application of Rule 5(2)(a)(iv) and Rule 5(2)(b) is subject to the provisions of Rule 3(3) and (4).

characteristic of the good and its connection with the geographical area of origin, it shall notify that requirement to the Director General.

(b) In order to meet such a requirement, particulars as referred to in subparagraph (a) shall be provided in a working language, but they shall not be translated by the International Bureau.

(c) An application that is not in accordance with a requirement as notified by a Contracting Party under subparagraph (a) shall, subject to Rule 6, have the effect that protection is renounced in respect of that Contracting Party.

(4) *[Application – Signature and/or Intention to Use]* (a) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication the application be signed by a person having legal standing to assert the rights conferred by such protection, it shall notify that requirement to the Director General.

(b) To the extent that a Contracting Party requires that for protection of a registered appellation of origin or geographical indication the application be accompanied by a declaration of intention to use the registered appellation of origin or geographical indication in its territory or a declaration of intention to exercise control over the use by others of the registered appellation of origin or geographical indication in its territory, it shall notify that requirement to the Director General.

(c) An application that is not signed in accordance with subparagraph (a), or that is not accompanied by a declaration indicated in subparagraph (b), shall, subject to Rule 6, have the effect that protection is renounced in respect of the Contracting Party requiring such signature or declaration, as notified under subparagraphs (a) and (b).

(5) *[Application – Protection Not Claimed for Certain Elements of the Appellation of Origin or the Geographical Indication]* The application shall indicate whether or not, to the best knowledge of the applicant, the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin, or to the geographical indication, in the Contracting Party of Origin, specifies that protection is not granted for certain elements of the appellation of origin or the geographical indication. Any such elements shall be indicated in the application in a working language.

(6) *[Application – Optional Contents]* The application may indicate or contain:

(i) the addresses of the beneficiaries;

(ii) a declaration that protection is renounced in one or more Contracting Parties;

(iii) a copy in the original language of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted to the appellation of origin or the geographical indication in the Contracting Party of Origin;

(iv) a statement to the effect that protection is not claimed for certain elements, other than those referred to in paragraph (5) of the appellation of origin or the geographical indication.

Rule 6 Irregular Applications

(1) *[Examination of the Application and Correction of Irregularities]* (a) Subject to paragraph (2), if the International Bureau finds that an application does not satisfy the conditions set out in Rule 3(1) or Rule 5, it shall defer registration and invite the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), to remedy the irregularity found within a period of three months from the date on which the invitation was sent.

(b) If the irregularity found is not corrected within two months of the date of the invitation referred to in subparagraph (a), the International Bureau shall send a reminder of its invitation. The sending of such a reminder shall have no effect on the three-month period referred to in subparagraph (a).

(c) If the correction of the irregularity is not received by the International Bureau within the three-month period referred to in subparagraph (a), the application shall, subject to subparagraph (d), be rejected by the International Bureau, which shall inform the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority, accordingly.

(d) In the case of an irregularity with respect to a requirement based on a notification made under Rule 5(3) or (4), or on a declaration made under Article 7(4), if the correction of the irregularity is not received by the International Bureau within the three-month period referred to in subparagraph (a), the protection resulting from the international registration shall be considered to be renounced in the Contracting Party having made the notification or the declaration.

(e) Where, in accordance with subparagraph (c), the application is rejected, the International Bureau shall refund the fees paid in respect of the application, after deduction of an amount corresponding to half the registration fee referred to in Rule 8.

(2) *[Application Not Considered as Such]* If the application is not filed by the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), it shall not be considered as such by the International Bureau and shall be returned to the sender.

Rule 7

Entry in the International Register

(1) *[Registration]* (a) Where the International Bureau finds that the application satisfies the conditions set out in Rules 3(1) and 5, it shall enter the appellation of origin or the geographical indication in the International Register.

(b) Where the application is also governed by the Lisbon Agreement or the 1967 Act, the International Bureau shall enter the appellation of origin in the International Register if it finds that the application satisfies the conditions set out in Rules 3(1) and 5 of the Regulations that apply in respect of the Lisbon Agreement or the 1967 Act.

(c) The International Bureau shall indicate per Contracting Party whether the international registration is governed by this Act or by the Lisbon Agreement or the 1967 Act.

(2) *[Contents of the Registration]* The international registration shall contain or indicate:

- (i) all the particulars given in the application;
- (ii) the language in which the International Bureau received the application;
- (iii) the number of the international registration;
- (iv) the date of the international registration.

(3) *[Certificate and Notification]* The International Bureau shall:

(i) send a certificate of international registration to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), to the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) that requested the registration; and

(ii) notify the international registration to the Competent Authority of each Contracting Party.

(4) *[Implementation of Article 31(1)]* (a) In case of the ratification of, or accession to, this Act by a State that is party to the Lisbon Agreement or the 1967 Act, Rule 5(2) to (4) shall apply *mutatis mutandis* with regard to international registrations or appellations of origin effective under the Lisbon Agreement or the 1967 Act in respect of that State. The International Bureau shall verify with the Competent Authority concerned any modifications to be made, in view of the requirements of Rules 3(1) and 5(2) to (4), for the purpose of their registration under this Act and notify international registrations thus effected to all other Contracting Parties. Modifications shall be subject to payment of the fee specified in Rule 8(1)(ii).

(b) Any declaration of refusal or notification of invalidation issued by a Contracting Party that is also party to the Lisbon Agreement or the 1967 Act shall remain effective under this Act, unless the Contracting Party notifies a withdrawal of refusal under Article 16 or a grant of protection under Article 18.

(c) Where subparagraph (b) does not apply, any Contracting Party that is also party to the Lisbon Agreement or the 1967 Act shall, upon receipt of a notification under subparagraph (a), continue to protect the appellation of origin concerned thenceforth also under this Act, unless the Contracting Party indicates otherwise. Any period granted under Article 5(6) of the Lisbon Agreement or the 1967 Act and still effective at the time the notification under subparagraph (a) is received shall, for its remainder, be subject to the provisions of Article 17.

Rule 8 Fees

(1) [*Amount of Fees*] The International Bureau shall collect the following fees²⁵, payable in Swiss francs:

- | | |
|--|-----|
| (i) fee for international registration | ... |
| (ii) fee for each modification of an international registration | ... |
| (iii) fee for providing an extract from the International Register | ... |
| (iv) fee for providing an attestation or any other written information concerning the contents of the International Register | ... |
| (v) individual fees as referred to in paragraph (2) | ... |

(2) [*Establishment of the Amount of Individual Fees*] (a) Where a Contracting Party makes a declaration as referred to in Article 7(4) that it wants to receive an individual fee, as referred to in that provision, the amount of such fee shall be indicated in the currency used by the Competent Authority.

(b) Where the fee is indicated in the declaration referred to in subparagraph (a) in a currency other than Swiss currency, the Director General shall, after consultation with the Competent Authority of the Contracting Party, establish the amount of the fee in Swiss currency on the basis of the official exchange rate of the United Nations.

(c) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual fee has been indicated by a Contracting Party is higher or lower by at least 5 per cent than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Competent Authority of that Contracting Party may ask the Director General to establish a new amount of the fee in Swiss currency according to the official exchange rate of the United Nations prevailing on the day preceding the day on which the request is made. The Director General shall proceed accordingly. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount on the website of the Organization.

²⁵ The amounts of the fees are to be decided by the Assembly.

(d) Where, for more than three consecutive months, the official exchange rate of the United Nations between the Swiss currency and the currency in which the amount of an individual fee has been indicated by a Contracting Party is lower by at least 10 per cent than the last exchange rate applied to establish the amount of the fee in Swiss currency, the Director General shall establish a new amount of the fee in Swiss currency according to the current official exchange rate of the United Nations. The new amount shall be applicable as from a date which shall be fixed by the Director General, provided that such date is between one and two months after the date of the publication of the said amount on the web site of the Organization.

(3) [*Crediting of Individual Fees to the Accounts of the Contracting Parties Concerned*] Any individual fee paid to the International Bureau in respect of a Contracting Party shall be credited to the account of that Contracting Party with the International Bureau within the month following the month in the course of which the recording of the international registration for which that fee has been paid was effected.

(4) [*Obligation to Use Swiss Currency*] All payments made under these Regulations to the International Bureau shall be in Swiss currency irrespective of the fact that, where the fees are paid through the Competent Authority, such Competent Authority may have collected those fees in another currency.

(5) [*Payment*] (a) Subject to subparagraph (b), the fees shall be paid directly to the International Bureau.

(b) The fees payable in connection with an application may be paid through the Competent Authority if the Competent Authority accepts to collect and forward such fees and the beneficiaries so wish. Any Competent Authority which accepts to collect and forward such fees shall notify that fact to the Director General.

(6) [*Modes of Payment*] Fees shall be paid to the International Bureau in accordance with the Administrative Instructions.

(7) [*Indications Accompanying the Payment*] At the time of the payment of any fee to the International Bureau, an indication must be given of the appellation of origin or the geographical indication concerned and the purpose of the payment.

(8) [*Date of Payment*] (a) Subject to subparagraph (b), any fee shall be considered to have been paid to the International Bureau on the day on which the International Bureau receives the required amount.

(b) Where the required amount is available in an account opened with the International Bureau and that Bureau has received instructions from the holder of the account to debit it, the fee shall be considered to have been paid to the International Bureau on the day on which the International Bureau receives an application or a request for the recording of a modification.

(9) [*Change in the Amount of the Fees*] Where the amount of any fee is changed, the amount valid on the date on which the fee was received by the International Bureau shall be applicable.

Chapter III
Refusal and Other Actions in Respect of International Registration

Rule 9
Refusal

(1) *[Notification to the International Bureau]* (a) A refusal shall be notified to the International Bureau by the Competent Authority of the concerned Contracting Party and shall be signed by that Competent Authority.

(b) The refusal shall be notified within a period of one year from the receipt of the notification of international registration under Article 6(4). In the case of Article 29(4), this time limit may be extended by another year.

(2) *[Contents of the Notification of Refusal]* A notification of refusal shall indicate or contain:

(i) the Competent Authority notifying the refusal;

(ii) the number of the relevant international registration, preferably accompanied by further information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication;

(iii) the grounds on which the refusal is based;

(iv) where the refusal is based on the existence of a prior right, as referred to in Article 13, the essential particulars of that prior right and, in particular, if it is constituted by a national, regional or international trademark application or registration, the date and number of such application or registration, the priority date (where appropriate), the name and address of the holder, a reproduction of the trademark, together with the list of relevant goods and services given in the trademark application or registration, it being understood that the list may be submitted in the language of the said application or registration;

(v) where the refusal concerns only certain elements of the appellation of origin, or the geographical indication, an indication of the elements that it concerns;

(vi) the judicial or administrative remedies available to contest the refusal, together with the applicable time limits.

(3) *[Entry in the International Register and Notifications by the International Bureau]* Subject to Rule 10(1), the International Bureau shall enter in the International Register any refusal, together with the date on which the notification of refusal was sent to the International Bureau, and shall communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 10

Irregular Notification of Refusal

(1) *[Declaration of Refusal Not Considered as Such]* (a) A notification of refusal shall not be considered as such by the International Bureau:

(i) if it does not indicate the number of the international registration concerned, unless other information given in the declaration enables the registration to be identified without ambiguity;

(ii) if it does not indicate any ground for refusal;

(iii) if it is sent to the International Bureau after the expiry of the relevant time limit referred to in Rule 9(1);

(iv) if it is not notified to the International Bureau by the Competent Authority.

(b) Where subparagraph (a) applies, the International Bureau shall inform the Competent Authority that submitted the notification of refusal that the refusal is not considered as such by the International Bureau and has not been entered in the International Register, shall state the reasons therefore and shall, unless it is unable to identify the international registration concerned, communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

(2) *[Irregular Declaration]* If the notification of refusal contains an irregularity other than those referred to in paragraph (1), the International Bureau shall nevertheless enter the refusal in the International Register and shall communicate a copy of the notification of refusal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting party of Origin. At the request of that Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), the International Bureau shall invite the Competent Authority that submitted the notification of refusal to regularize the notification without delay.

Rule 11

Withdrawal of Refusal

(1) *[Notification to the International Bureau]* A refusal may be withdrawn, in part or in whole, at any time by the Competent Authority that notified it. The withdrawal of a refusal shall be notified to the International Bureau by the relevant Competent Authority and shall be signed by such authority.

(2) *[Contents of the Notification]* The notification of withdrawal of a refusal shall indicate:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication;

(ii) the reason for the withdrawal and, in case of a partial withdrawal, the particulars referred to in Rule 9(2)(v);

(iii) the date on which the refusal was withdrawn.

(3) *[Entry in the International Register and Notifications by the International Bureau]* The International Bureau shall enter in the International Register any withdrawal referred to in paragraph (1) and shall communicate a copy of the notification of withdrawal to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 12

Notification of Grant of Protection

(1) *[Optional Statement of Grant of Protection]* (a) A Competent Authority of a Contracting Party which does not refuse the effects of an international registration may, within the time limit referred to in Rule 9(1), send to the International Bureau a statement confirming that protection is granted to the appellation of origin, or the geographical indication, that is the subject of an international registration.

(b) The statement shall indicate:

(i) the Competent Authority of the Contracting Party making the statement;

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication; and

(iii) the date of the statement.

(2) *[Optional Statement of Grant of Protection Following a Refusal]* (a) Where a Competent Authority that has previously submitted a notification of refusal wishes to withdraw that refusal, it may, instead of notifying the withdrawal of refusal in accordance with Rule 11(1), send to the International Bureau a statement to the effect that protection is granted to the relevant appellation of origin or geographical indication.

(b) The statement shall indicate:

(i) the Competent Authority of the Contracting Party making the statement;

(ii) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be

confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(iii) the reason for the withdrawal and, in case of a grant of protection that amounts to a partial withdrawal of refusal, the particulars referred to in Rule 9(2)(v); and

(iv) the date on which protection was granted.

(3) *[Entry in the International Register and Notifications by the International Bureau]*

The International Bureau shall enter in the International Register any statement referred to in paragraphs (1) or (2) and communicate a copy of such statement to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 13

Notification of Invalidation of the Effects of an International Registration in a Contracting Party

(1) *[Notification of Invalidation to the International Bureau]* Where the effects of an international registration are invalidated in a Contracting Party, in whole or in part, and the invalidation is no longer subject to appeal, the Competent Authority of the concerned Contracting Party shall transmit to the International Bureau a notification of invalidation. The notification shall indicate or contain:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(ii) the authority that pronounced the invalidation;

(iii) the date on which the invalidation was pronounced;

(iv) where the invalidation is partial, the particulars referred to in Rule 9(2)(v);

(v) the grounds on the basis of which the invalidation was pronounced;

(vi) a copy of the decision that invalidated the effects of the international registration.

(2) *[Entry in the International Register and Notifications by the International Bureau]*

The International Bureau shall enter the invalidation in the International Register together with the particulars referred to in items (i) to (v) of paragraph (1) and shall communicate a copy of the notification to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 14

Notification of Transitional Period Granted to Third Parties

(1) *[Notification to the International Bureau]* Where a third party has been granted a defined period of time in which to terminate the use of a registered appellation of origin, or a registered geographical indication, in a Contracting Party, in accordance with Article 17(1), the Competent Authority of that Contracting Party shall notify the International Bureau accordingly. The notification shall indicate:

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication;

(ii) the identity of the third party concerned;

(iii) the period granted to the third party, preferably accompanied by information about the scope of the use during the transitional period;

(iv) the date from which the defined period begins, it being understood that the date may not be later than one year and three months from the receipt of the notification of international registration under Article 6(4) or, in the case of Article 29(4), no later than two years and three months from such receipt.

(2) *[Desirable Duration]* The duration of the period granted to a third party shall not be longer than 15 years, it being understood that the period may depend on the specific situation of each case and that a period longer than ten years would be exceptional.

(3) *[Entry in the International Register and Notifications by the International Bureau]* Subject to the notification referred to in paragraph (1) being sent by the Competent Authority to the International Bureau before the date referred to in paragraph (1)(iv), the International Bureau shall enter such notification in the International Register together with the particulars shown therein and shall communicate a copy of the notification to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

Rule 15

Modifications

(1) *[Permissible Modifications]* The following modifications may be recorded in the International Register:

(i) the addition or deletion of a beneficiary or some beneficiaries;

(ii) a modification of the names or addresses of the beneficiaries;

(iii) a modification of the limits of the geographical area of origin of the good or goods to which the appellation of origin, or the geographical indication, applies;

(iv) a modification relating to the legislative or administrative act, the judicial or administrative decision, or the registration referred to in Rule 5(2)(a)(vii);

(v) a modification relating to the Contracting Party of Origin that does not affect the geographical area of origin of the good or goods to which the appellation of origin, or the geographical indication, applies;

(vi) a modification under Rule 16.

(2) *[Procedure]* (a) A request for entry of a modification referred to in paragraph (1) shall be presented to the International Bureau by the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), and shall be accompanied by the fee specified in Rule 8.

(b) A request for entry of a modification referred to in paragraph (1) shall, where it concerns a newly established trans-border geographical area of origin, be presented to the International Bureau by the commonly designated Competent Authority.

(3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any modification requested in accordance with paragraphs (1) and (2) together with the date of receipt of the request by the International Bureau, confirm the entry to the Competent Authority that requested the modification, and communicate such modification to the Competent Authorities of the other Contracting Parties.

(4) *[Optional Alternative]* In the case of Article 5(3), paragraphs (1) to (3) shall apply *mutatis mutandis*, it being understood that a request from the beneficiaries or from the natural person or legal entity referred to in Article 5(2)(ii) must indicate that the change is requested because of a corresponding change to the registration, the legislative or administrative act, or the judicial or administrative decision, on the basis of which the appellation of origin, or the geographical indication, had been granted protection in the Contracting Party of Origin; and that the entry of the modification in the International Register shall be confirmed to the concerned beneficiaries or natural person or legal entity by the International Bureau, which shall also inform the Competent Authority of the Contracting Party of Origin.

Rule 16

Renunciation of Protection

- (1) *[Notification to the International Bureau]* The Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may at any time notify the International Bureau that protection of the appellation of origin, or the geographical indication, is renounced, in whole or in part, in respect of one or some of the Contracting Parties. The notification of renunciation of protection shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin, or the indication constituting the geographical indication.
- (2) *[Withdrawal of a Renunciation]* Any renunciation, including a renunciation under Rule 6(1)(d), may be withdrawn, in whole or in part, at any time by the Competent Authority or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, subject to payment of the fee for a modification and, in the case of a renunciation under Rule 6(1)(d), the correction of the irregularity.
- (3) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any renunciation of protection referred to in paragraph (1), or any withdrawal of a renunciation referred to in paragraph (2), confirm the entry to the Competent Authority of the Contracting Party of Origin and, in the case of Article 5(3), the beneficiaries or the natural person or legal entity, while also informing the Competent Authority of the Contracting Party of Origin, and shall communicate the entry of such modification in the International Register to the Competent Authorities of each Contracting Party to which the renunciation, or the withdrawal of the renunciation, relates.
- (4) *[Application of Rules 9 to 12]* The Competent Authority of a Contracting Party that receives a notification of the withdrawal of a renunciation may notify the International Bureau of the refusal of the effects of the international registration in its territory. The declaration shall be addressed to the International Bureau by such Competent Authority within a period of one year from the date of receipt of the notification by the International Bureau of the withdrawal of the renunciation. Rules 9 to 12 shall apply *mutatis mutandis*.

Rule 17

Cancellation of an International Registration

- (1) *[Request for Cancellation]* The request for cancellation shall state the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the denomination constituting the appellation of origin or the indication constituting the geographical indication.

(2) *[Entry in the International Register and Notification to the Competent Authorities]* The International Bureau shall enter in the International Register any cancellation together with the particulars given in the request, confirm the entry to the Competent Authority of the Contracting Party of Origin or, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii), while also informing the Competent Authority of the Contracting Party of Origin, and shall communicate the cancellation to the Competent Authorities of the other Contracting Parties.

Rule 18

Corrections Made to the International Register

- (1) *[Procedure]* If the International Bureau, acting *ex officio* or at the request of the Competent Authority of the Contracting Party of Origin, finds that the International Register contains an error with respect to an international registration, it shall correct the Register accordingly.
- (2) *[Optional Alternative]* In the case of Article 5(3), a request under paragraph (1) can also be submitted by the beneficiaries or by the natural person or legal entity referred to in Article 5(2)(ii). The beneficiaries or the natural person or legal entity shall be notified by the International Bureau of any correction concerning the international registration.
- (3) *[Notification of Corrections to the Competent Authorities]* The International Bureau shall notify any correction of the International Register to the Competent Authorities of all Contracting Parties as well as, in the case of Article 5(3), the beneficiaries or the natural person or legal entity referred to in Article 5(2)(ii).
- (4) *[Application of Rules 9 to 12]* Where the correction of an error concerns the appellation of origin or the geographical indication, or the good or goods to which the appellation of origin or the geographical indication applies, the Competent Authority of a Contracting Party has the right to declare that it cannot ensure the protection of the appellation of origin or geographical indication after the correction. The declaration shall be addressed to the International Bureau by such Competent Authority within a period of one year from the date of notification by the International Bureau of the correction. Rules 9 to 12 shall apply *mutatis mutandis*.

Chapter IV

Miscellaneous Provisions

Rule 19

Publication

The International Bureau shall publish all entries made in the International Register.

Rule 20Extracts from the International Register and Other Information
Provided by the International Bureau

- (1) *[Information on the Contents of the International Register]* Extracts from the International Register or any other information on the contents of the Register shall be provided by the International Bureau to any person so requesting, on payment of the fee specified in Rule 8.
- (2) *[Communication of Provisions, Decisions or the Registration Under Which an Appellation of Origin or a Geographical Indication Is Protected]* (a) Any person may request from the International Bureau a copy in the original language of the provisions, the decisions or the registration referred to in Rule 5(2)(a)(vii), on payment of the fee specified in Rule 8.
- (b) Where such documents have already been communicated to the International Bureau, the latter shall transmit without delay, a copy to the person who has made the request.
- (c) If such a document has never been communicated to the International Bureau, the latter shall request a copy of it from the Competent Authority of the Contracting Party of Origin and shall transmit the document, on receipt, to the person who has made the request.

Rule 21

Signature

Where the signature of a Competent Authority is required under these Regulations, such signature may be printed or replaced by the affixing of a facsimile or an official seal.

Rule 22

Date of Dispatch of Various Communications

Where the notifications referred to in Rules 9(1), 14(1), 16(4) and 18(4) are communicated through a postal service, the date of dispatch shall be determined by the postmark. If the postmark is illegible or missing, the International Bureau shall treat the communication concerned as if it had been sent 20 days before the date on which it was received. Where such notifications are sent through a mail delivery service, the date of dispatch shall be determined by the information provided by such delivery service on the basis of the details of the mailing as recorded by it. Such notifications may also be communicated by facsimile or by electronic means, as provided for in the Administrative Instructions.

Rule 23

Modes of Notification by the International Bureau

- (1) *[Notification of the International Registration]* The notification of the international registration, referred to in Rule 7(3)(ii), or the notification of the withdrawal of a renunciation referred to in Rule 16(3), shall be addressed by the International Bureau to the Competent

Authority of each Contracting Party concerned by any means enabling the International Bureau to establish the date on which the notification was received, as provided for in the Administrative Instructions.

(2) *[Other Notifications]* Any other notification by the International Bureau referred to in these Regulations shall be addressed to the Competent Authorities by any means enabling the International Bureau to establish that the notification has been received.

Rule 24

Administrative Instructions

(1) *[Establishment of Administrative Instructions; Matters Governed by Them]* (a) The Director General shall establish Administrative Instructions and may modify them. Before establishing or modifying the Administrative Instructions, the Director General shall consult the Competent Authorities of the Contracting Parties which have direct interest in the proposed Administrative Instructions or their proposed modification.

(b) The Administrative Instructions shall deal with matters in respect of which these Regulations expressly refer to such Instructions and with details in respect of the application of these Regulations.

(2) *[Supervision by the Assembly]* The Assembly may invite the Director General to modify any provision of the Administrative Instructions and the Director General shall act upon any such invitation.

(3) *[Publication and Effective Date]* (a) The Administrative Instructions and any modification thereof shall be published.

(b) Each publication shall specify the date on which the published provisions become effective.

(4) *[Conflict with the Act or These Regulations]* In the case of conflict between, on the one hand, any provision of the Administrative Instructions and, on the other hand, any provision of the Act or these Regulations, the latter shall *prevail*.

LI/DC/20
May 21, 2015 (Original: English)

FINAL ACT

adopted by the Diplomatic Conference on May 20, 2015

In accordance with the decision by the Lisbon Union Assembly taken at its Twenty-Ninth (20th Ordinary) session in September 2013 to convene a Diplomatic Conference in 2015, and following the preparations carried out by the Preparatory Committee of the said Conference and the World Intellectual Property Organization (WIPO), the Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was convened by WIPO and held in Geneva from May 11 to 21, 2015.

The Diplomatic Conference adopted, on May 20, 2015, the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. The said Act was opened for signature on May 21, 2015.

IN WITNESS THEREOF, the undersigned, being duly authorized thereto, have signed the present Final Act in Geneva, on May 21, 2015:

Algeria, Angola, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cameroon, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Democratic People's Republic of Korea, Denmark, Finland, France, Gabon, Georgia, Germany, Greece, Haiti, Hungary, Iran (Islamic Republic of), Israel, Italy, Latvia, Lithuania, Luxembourg, Mali, Mexico, Montenegro, Morocco, Mozambique, Netherlands, Nicaragua, Oman, Peru, Portugal, Republic of Moldova, Romania, Russian Federation, Senegal, Serbia, Slovakia, Spain, Switzerland, Togo, Tunisia, African Intellectual Property Organization (OAPI), European Union (54)

LI/DC/21

21 May 2015 (Original: English)

SIGNATURES OF THE GENEVA ACT OF THE LISBON AGREEMENT ON
APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS*Memorandum by the Secretariat*

The following Delegations signed, on May 21, 2015, the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications:

Bosnia and Herzegovina, Burkina Faso, Congo, France, Gabon, Hungary, Mali, Nicaragua, Peru, Romania, Togo (11).

LI/DC/22

June 14, 2015 (Original: English)

NOTES ON THE GENEVA ACT OF THE LISBON AGREEMENT ON APPELLATIONS
OF ORIGIN AND GEOGRAPHICAL INDICATIONS*Document prepared by the Secretariat*

INTRODUCTION

The present document contains Notes on the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, as contained in document LI/DC/19 (“the Geneva Act”). The Notes have been prepared by the Secretariat, on the basis of the text of the Geneva Act adopted by the Diplomatic Conference. Where a conflict exists between the Notes and provisions of the Geneva Act, the latter shall prevail.

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NOTES ON ARTICLE 1: ABBREVIATED EXPRESSIONS

1.01 Items (vi) and (vii) were added to the list of abbreviated expressions in Article 1 as a result of the discussions at the ninth session of the Working Group on the Development of the Lisbon System (“Working Group”). Thus, the terms “appellation of origin” and “geographical indication” are used throughout the Geneva Act without prejudice to the way in which the national or regional legislation of a Contracting Party addresses the subject-matter that is defined in Article 2. The Geneva Act does not oblige Contracting Parties to use the same terminology, nor require them to define the subject-matter in the same way as stipulated in the Geneva Act. A similar approach was taken at the Diplomatic Conference that adopted the Lisbon Agreement in 1958. Reference is made in this regard to the Records of the Lisbon Conference, p. 859 (in an unofficial translation from the official French text): “By introducing a definition for appellations of origin into the Agreement itself, such definition could be invoked for the purposes of registration, without prejudicing a national definition, whether broader or more precise in scope.” In the same vein, as stipulated in Article 9, Contracting Parties will not be required to distinguish in their national or regional law as between appellations of origin and geographical indications. However, Contracting Parties that do not make such a distinction – but provide protection under Chapter III on the basis of a broader definition corresponding to the definition of a geographical indication under Article 2 – will be obliged to provide such protection not only in respect of geographical indications, but also in respect of appellations of origin registered under the Geneva Act meeting the definition of a geographical indication.

1.02 Item (xii) concerns the geographical area where the good or goods designated by the appellation of origin or identified by the geographical indication should originate, in accordance with Article 2.

1.03 Item (xiii): in respect of a good from a geographical area of origin situated in, or covering, more than one Contracting Party, reference is made to Article 2(2), second sentence.

1.04 Item (xiv) defines the term “Contracting Party”, which is used instead of the term “countries” in the Lisbon Agreement and the 1967 Act, as the Geneva Act is open for accession by States as well as certain intergovernmental organizations.

1.05 Item (xv) defines the term “Contracting Party of Origin”. The notion of “Contracting Party of Origin” is used to determine who is eligible to register a given appellation of origin or geographical indication. The determining factors in this respect are: (1) the geographical area of origin of the good; and (2) the legislation under which the appellation of origin or geographical indication is protected in the territory of the Contracting Party where the geographical area of origin is situated – see Article 2(1) –, which is also important for determining which Contracting Party should be regarded as the Contracting Party of Origin in the case of a Contracting Party that is a member State of an intergovernmental organization.

1.06 Item (xvi): the term “Competent Authority” also applies to the authority commonly designated by two or more Contracting Parties in each of which parts of a geographical area of origin are situated – see Article 5(4) –, if such Contracting Parties have established an appellation of origin or geographical indication jointly in respect of a good originating in a trans-border geographical area of origin, as referred to in Article 2(2), second sentence.

1.07 Item (xvii) defines the term “beneficiaries”, following the concerns reflected in paragraph 199, fourth sentence, of the Report of the sixth session of the Working Group (LI/WG/DEV/6/7).

1.08 Item (xviii): as the Geneva Act will be open to certain types of intergovernmental organizations, the accession criteria for intergovernmental organizations have been set out in Article 28(1)(iii).

NOTES ON ARTICLE 2: SUBJECT-MATTER

2.01 The subject-matter to which the Geneva Act applies – appellations of origin and geographical indications – is defined in several different ways under national and regional laws. Moreover, these laws do not all identify the subject-matter by the terms appellation of origin and geographical indication. Article 2(1) establishes, for the purposes of the Geneva Act only, common denominators for the titles of protection existing at the national or regional level, while recognizing the differences. The provision does this on the basis of the definitions of Article 2 of the Lisbon Agreement/1967 Act and Article 22.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”). The prerequisite “protected in the Contracting Party of Origin” is based on Article 1(2) of the Lisbon Agreement/1967 Act.

2.02 The term “good”, instead of the term “product” used in the Lisbon Agreement or in the 1967 Act, has been used throughout the English version of the Geneva Act, to align the terminology used with the one contained in the TRIPS Agreement.

2.03 The phrases “or another denomination known as referring to such area” and “or another indication known as referring to such area” concern denominations and indications that are strictly speaking not geographical names, but which have obtained a geographical connotation. Such possibility also exists under the Lisbon Agreement and the 1967 Act, as confirmed by the Lisbon Union Council in 1970 (see the document entitled “Problems Arising from the Practical Application of the Lisbon Agreement” (AO/V/5 of July 1970) and the Report of the fifth session of the Lisbon Union Council (document AO/V/8 of September 1970)).

2.04 There is some leeway in respect of the cumulative requirements “natural and human factors” in the definition of an appellation of origin. The ‘geographical environment’ of the geographical area of origin referred to in Article 2(1)(i) may be determined predominantly by natural factors or predominantly by human factors. In this regard, reference is made to, in particular, paragraphs 72, 78 and 86 of the report of the fourth session of the Working Group (document LI/WG/DEV/4/7).

2.05 The Lisbon Agreement and the 1967 Act contain in their definition of “country of origin” (Article 2(2)) a requirement of reputation. The phrase at the end of Article 2(1)(i) of the Geneva Act reading “and which has given the good its reputation” incorporates this requirement into the definition of an appellation of origin. The phrase refers back to the “denomination” that constitutes the appellation of origin, i.e., a denomination as qualified by Article 2(1)(i).

2.06 Following the concern expressed by several delegations at the fifth session of the Working Group as regards the geographical coverage of the notion of “geographical area of origin”, Article 2(2) makes it clear that the geographical area in question may consist of the entire territory of a Contracting Party or a region, locality or place in such territory. In addition, the second sentence of Article 2(2) specifies that appellations of origin or geographical indications for goods originating in trans-border geographical areas of origin could also be the subject of international registrations under the Geneva Act.

NOTES ON ARTICLE 3: COMPETENT AUTHORITY

3.02 As the competence for granting or registering rights in appellations of origin or geographical indications varies among national and regional systems for their protection, the Geneva Act requires each Contracting Party to designate an entity responsible for the administration of the Geneva Act in its territory and for communications with the International Bureau under the procedures of the Geneva Act and its Regulations.

NOTES ON ARTICLE 4: INTERNATIONAL REGISTER

4.01 Article 4 makes it clear that the International Register of the Geneva Act, to be kept by the International Bureau, would not only incorporate the registrations effected under the Geneva Act, but also the registrations effected under the Lisbon Agreement or the 1967 Act.

NOTES ON ARTICLE 5: APPLICATION

5.01 Article 5(2) specifies the persons in whose name international applications can be filed. Under the Lisbon Agreement and the 1967 Act, international applications are filed in the name of those having the right to use the appellation of origin. However, there are national legal systems that require that the applicant is entitled to exercise control over the use of the geographical indication or appellation of origin in commerce. Article 5(2) allows for both possibilities.

5.02 The term “legal entity” is not defined in the Geneva Act. However, the term should be understood broadly and cover, in any event, legal entities having legal standing to assert rights in a given appellation of origin or geographical indication, such as federations and associations representing holders of a right to use the appellation of origin or geographical indication. The phrase “or other rights in the appellation of origin or geographical indication” aims to make it clear that the term “legal entity” also covers owners of certification marks or collective marks.

5.03 Article 5(3) is an optional provision. It allows a Contracting Party to permit international applications to be presented directly to the International Bureau by the beneficiaries, as defined in Article 1(xvii), or a natural person or legal entity, as referred to in Article 5(2)(ii), as an alternative to submission by its Competent Authority. Paragraph (3)(b) makes the application of paragraph (3)(a) subject to the deposit by the Contracting Party of a declaration indicating that it permits such direct applications.

5.04 Article 5(4) is also an optional provision. Under the Lisbon Agreement, Contracting Parties have registered appellations of origin in respect of goods originating in that part of a trans-border geographical area situated in their own territory. Article 5(4) makes it clear that the Lisbon System also allows for the international registration of an appellation of origin or a geographical indication in respect of goods originating in the whole trans-border geographical area, if the Contracting Parties concerned have jointly established the appellation of origin or the geographical indication. In such a case, they should also designate a common Competent Authority, as defined in Article 3, for the appellation of origin or geographical indication concerned. Adjacent Contracting Parties are not required to establish such appellations of origin or geographical indications jointly. Instead, they may prefer to establish individual, separate appellations of origin or geographical indications, i.e., not for the entire trans-border area, but only for that part of the trans-border area situated in their own territory. Article 5(4) only deals with the exceptional situation when the adjacent Contracting Parties have established a trans-border appellation of origin or geographical indication.

NOTES ON ARTICLE 6: INTERNATIONAL REGISTRATION

6.01 The provisions presented in Article 6 are based on the premise that an internationally registered appellation of origin or geographical indication, in order to be protectable in all Contracting Parties, should, at least, meet the definition requirements of Article 2(1).

6.02 As the International Bureau is only authorized to refuse applications that do not meet the formal requirements that apply under the Lisbon Agreement and the 1967 Act or under the Geneva Act, including the applicable Regulations under these instruments, applications concerning an appellation of origin or a geographical indication consisting of or containing a term occurring in an appellation of origin or geographical indication already recorded in the International Register will not be refused by the International Bureau on that ground, as this would amount to a refusal on the basis of a substantive ground. It is for each Contracting Party to decide, on the basis of its own legal system and practice, whether such appellation of origin or geographical indication may coexist on its territory with the already recorded appellation of origin or geographical indication, or that one of them shall prevail.

NOTES ON ARTICLE 7: FEES

7.01 Article 7(3) provides that reduced fees shall be established for certain international registrations, in particular for those from developing countries or least-developed countries. Such fee reductions are to be established by virtue of a decision of the Assembly.

7.02 The individual fee system of Article 7(4) is introduced without a requirement for the applicant to designate the Contracting Parties in respect of which protection is requested. Non-payment of an individual fee results in renunciation of protection in respect of the Contracting Party requiring the fee. Thus, an applicant has the option to renounce protection in respect of one, some or all Contracting Parties requiring an individual fee, by simply not paying the individual fee or fees concerned. Any such renunciation can also be withdrawn, subject to payment of the individual fee and the fee for entry of the modification of the international registration in the International Register. In such case, the period for a Contracting Party to refuse protection in respect of the appellation of origin or geographical

indication concerned starts at the date on which it receives the notification of the withdrawal of the renunciation.

7.03 The same applies under Article 29(4) in respect of newly acceding Contracting Parties. In principle, all international registrations in force under the Geneva Act at the time of accession shall be protected by a newly acceding Contracting Party, except those in respect of which it notifies a refusal under Article 29(4) within the applicable time-limit, as specified in the notification it will receive from the International Bureau, or in respect of which protection in its territory is renounced or considered renounced.

NOTES ON ARTICLE 8: PERIOD OF VALIDITY OF INTERNATIONAL REGISTRATIONS

8.01 Where Article 2(1) specifies, *inter alia*, that the international registration of an appellation of origin or geographical indication is dependent upon its protection in the Contracting Party of Origin, Article 8(1) makes it clear that the other Contracting Parties are no longer required to protect a registered appellation of origin or geographical indication, if its protection in the Contracting Party of Origin has ceased.

8.02 Article 8(2) specifies two possibilities for cancellation of an international registration. The first possibility (paragraph (2)(a)) refers to a request for cancellation that the Competent Authority of the Contracting Party of Origin, or, in the case of Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) or the Competent Authority of the Contracting Party of Origin, may submit at any time to the International Bureau. The second possibility (paragraph (2)(b)) concerns the situation that the registered appellation of origin or geographical indication is no longer protected in the Contracting Party of Origin, in which case its Competent Authority would be obliged to request cancellation of the international registration.

NOTES ON ARTICLE 9: COMMITMENT TO PROTECT

9.01 Article 9(1) intends to reflect that there are different types of systems for the protection of appellations of origin and geographical indications around the world and also recognizes that there are systems that do not distinguish as between appellations of origin and geographical indications. The Geneva Act does not require Contracting Parties to make such distinction. However, Contracting Parties that do not make such a distinction – but provide protection under Chapter III on the basis of a broader definition corresponding to the definition of a geographical indication under Article 2 – will be obliged to provide such protection not only in respect of geographical indications, but also in respect of appellations of origin registered under the Geneva Act meeting the definition of a geographical indication.

9.02 One of the consequences of the phrase “within its own legal system and practice but in accordance with the terms of this Act” is that the national or regional law of a Contracting Party will determine whether and to what extent the enforcement of rights in a geographical indication or appellation of origin can be limited due to acquiescence.

NOTES ON ARTICLE 10: PROTECTION UNDER LAWS OF CONTRACTING PARTIES OR OTHER INSTRUMENTS

10.01 Article 10(1) leaves Contracting Parties free as regards the form of the legal protection under which they provide the protection to be to be accorded under the Geneva Act in respect of registered geographical indications and appellations of origin. In addition to the form of protection, Contracting Parties also remain free to determine the name of the title of protection granted under their own legal system.

10.02 The provisions of Article 10(2) establish a safeguard clause in respect of other forms of protection that may be available in a Contracting Party than the protection to be accorded under the Geneva Act. As stipulated in Article 15(2), a Contracting Party that has issued a refusal under Article 15 in respect of a registered appellation of origin because it takes the view that the denomination fails to meet the definition of an appellation of origin, should nevertheless provide protection to the denomination as a geographical indication, if the denomination meets the definition of a geographical indication.

10.03 Article 10(2) also confirms that the Geneva Act is not an obstacle to the possibility for Contracting Parties to establish more extensive protection than required under the Act. However, such other protection should not diminish or interfere with the enjoyment of the rights afforded by the Geneva Act.

NOTES ON ARTICLE 11: PROTECTION IN RESPECT OF REGISTERED APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS

11.01 The terms “the denomination constituting” and “the indication constituting” in the Agreed Statement concerning Article 11(2) are references to the factual use made of such a denomination or indication. For comparison, Article 6 of the current Lisbon Agreement does not mention “appellation of origin”, but “appellation”.

11.02 The purpose of Article 11(3) is to prevent the registration of trademarks that consist of or contain a registered appellation of origin or a registered geographical indication by someone not authorized to use the registered appellation of origin or geographical indication. The word “trademark” should be understood in the broadest possible sense, so as to include also collective and certification marks.

11.03 Article 11(3) is without prejudice to Article 13(1), which addresses the issue of prior trademark rights.

11.04 See also Note 6.02.

NOTES ON ARTICLE 12: PROTECTION AGAINST BECOMING GENERIC

12.01 The terms “the denomination constituting” and “the indication constituting” in the Agreed Statement concerning Article 12 are references to the factual use made of such a denomination or indication. For comparison, Article 6 of the current Lisbon Agreement does not mention “appellation of origin”, but “appellation”.

NOTES ON ARTICLE 13: SAFEGUARDS IN RESPECT OF OTHER RIGHTS

13.01 The chapeau of Article 13(1) refers to trademarks that have been applied for or registered in good faith as well as trademark rights that have been acquired through use in good faith. The reference to trademark rights acquired through use is not meant to create any obligation whatsoever on the part of Contracting Parties to provide that trademark rights can be acquired merely through use, but only that, if trademark rights can be acquired through use in good faith in a Contracting Party, these will also benefit from the safeguards in respect of prior trademark rights, as specified in the provision.

13.02 Other rights than those mentioned in Article 13 are safeguarded through the provisions of Article 15 and Article 19, under which no limitation applies as regards possible grounds for refusal or invalidation. Lacking a refusal, the Contracting Party may decide, under Article 17(1), that a transitional period shall apply before use under such other right must be discontinued.

NOTES ON ARTICLE 14: LEGAL REMEDIES AND LEGAL PROCEEDINGS

14.01 Article 14 requires national or regional legislation to provide for and make available effective legal remedies and legal proceedings for the protection and enforcement of registered appellations of origin and registered geographical indications. The word “legal” is not meant to exclude the application of administrative measures.

NOTES ON ARTICLE 15: REFUSAL

15.01 Article 15 concerns the procedure for issuing refusals following the receipt of a notification of international registration. Time limits are not specified in the Geneva Act but in the Regulations, so that modifications can be adopted by the Assembly of the Special Union and would not require a diplomatic conference, as would be the case if time limits were specified in the Geneva Act itself.

15.02 Article 15(3) introduces the obligation for Contracting Parties to establish procedures enabling interested parties to present possible grounds for refusal to the Competent Authority and request the Competent Authority to notify a refusal under Article 15(1). Refusals can be based on any ground.

NOTES ON ARTICLE 17: TRANSITIONAL PERIOD

17.01 The phrase “Without prejudice to Article 13” in Article 17(1) clarifies that, in view of the safeguards in respect of rights under Article 13, transitional periods under Article 17 are not applicable with regard to such safeguarded rights.

17.02 As specified in Article 17(1), a defined period for the termination of prior use may also be applied in case a refusal is withdrawn or in case a statement of grant of protection is notified following a refusal.

NOTES ON ARTICLE 21: MEMBERSHIP OF THE LISBON UNION

21.01 This provision clarifies that the Contracting Parties to the Geneva Act shall be members of the same Union as the States party to the 1967 Act.

NOTES ON ARTICLE 22: ASSEMBLY OF THE SPECIAL UNION

22.01 The provisions of Article 22 are based, to a great extent, on those contained in Article 9 of the 1967 Act. However, whenever it appeared necessary, as in the case of the voting rights of intergovernmental organizations, such provisions have been supplemented by those contained in Article 21 of the Geneva Act of the Hague Agreement, while taking into account the constitutional reform decisions taken by the Lisbon Union Assembly in 2003 in respect of Article 9 of the 1967 Act.

NOTES ON ARTICLE 23: INTERNATIONAL BUREAU

23.01 The provisions of this Article largely reproduce those contained in Article 10 of the 1967 Act.

NOTES ON ARTICLE 24: FINANCES

24.01 The provisions of this Article are modeled on those contained in the Geneva Act of the Hague Agreement, while taking into account the constitutional reform decisions taken by the Lisbon Union Assembly in 2003 in respect of Article 11 of the 1967 Act.

NOTES ON ARTICLE 25: REGULATIONS

25.01 This Article makes an express reference to the Regulations and defines the procedure for the amendment of certain provisions of the Regulations.

25.02 Article 25(3) establishes the superiority of the provisions of the Geneva Act over those contained in the Regulations so that, in the event of conflict between the two sets of provisions, the provisions of the Geneva Act shall prevail.

NOTES ON ARTICLE 29: EFFECTIVE DATE OF RATIFICATIONS AND ACCESSIONS

29.01 This provision reflects that both States and intergovernmental organizations may accede to the Geneva Act.

NOTES ON ARTICLE 30: PROHIBITION OF RESERVATIONS

30.01 This Article excludes any reservation to the Geneva Act.

NOTES ON ARTICLE 31: APPLICATION OF THE LISBON AGREEMENT AND THE 1967 ACT

31.01 Article 31(1) deals with relations between States that are party both to the Geneva Act and the Lisbon Agreement or the 1967 Act. The principle set out is that the Geneva Act alone would apply to the relations between those States. Thus, with respect to persons who derive their right to file an international application from a State bound both by the Geneva Act and by the Lisbon Agreement or the 1967 Act and who wish to obtain protection in other States party both to the Geneva Act and to the Lisbon Agreement or the 1967 Act, as the case may be, the provisions of the Geneva Act apply. The second sentence makes it clear that the continued protection under the Geneva Act of international registrations initially effected under the Lisbon Agreement or the 1967 Act shall not be at a lower level than required by the Lisbon Agreement or the 1967 Act.

31.02 Article 31(2) deals with relations between States party both to the Geneva Act and to the Lisbon Agreement or the 1967 Act, on the one hand, and States party only to the Lisbon Agreement or the 1967 Act without being at the same time party to the Geneva Act, on the other.

LI/DC/23

June 14, 2015 (Original: English)

NOTES ON THE REGULATIONS UNDER THE GENEVA ACT OF THE LISBON
AGREEMENT ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL
INDICATIONS

Document prepared by the Secretariat

INTRODUCTION

The present document contains Notes on the Regulations under the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, as contained in document LI/DC/19 ("the Regulations under the Geneva Act of the Lisbon Agreement"). The Notes have been prepared by the Secretariat, on the basis of the text of the Geneva Act adopted by the Diplomatic Conference. Where a conflict exists between the Notes and provisions of the Regulations under the Geneva Act of the Lisbon Agreement, the latter shall prevail.

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NOTES ON RULE 1: ABBREVIATED EXPRESSIONS

R1.01 Rule 1 represents an adapted version of the model of Rule 1 of the Regulations under the Singapore Treaty on the Law of Trademarks of 2006. On substance, the provision is based on Rule 1 of the current Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

NOTES ON RULE 2: CALCULATION OF TIME LIMITS

R2.01 The provisions of this rule are based on those contained in Rule 2 of the current Lisbon Regulations.

NOTES ON RULE 3: WORKING LANGUAGES

R3.01 The provisions of this rule largely reproduce those contained in Rule 3 of the current Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

NOTES ON RULE 4: COMPETENT AUTHORITY

R4.01 This rule is drafted in accordance with the practice that has developed under Rule 4 of the current Lisbon Regulations.

R4.02 As regards the responsibilities of Competent Authorities, reference is made to Article 3 of the Geneva Act of the Lisbon Agreement. In addition, Rule 4(1) makes clear that the name and contact details of the Competent Authority must be notified at the time of accession.

R4.03 Paragraph (2) should be seen in light of the fact that, unlike in other areas of industrial property, there may be more than one authority in a Contracting Party that is responsible for the grant of protection in respect of geographical indications. For example, different protection systems may apply in respect of appellations of origin and/or geographical indications in a Contracting Party and different authorities may have been empowered for those different protection systems. In addition, as suggested at the eighth session of the Working Group, under the regional legislation of an intergovernmental organization, certain competencies of the Competent Authority of the intergovernmental organization may have been delegated to other authorities, for example the Competent Authority of a member State of the intergovernmental organization (document LI/WG/DEV/8/7 Prov, paragraph 41).

R4.04 Paragraph (3) has been drafted in recognition of the practical experience of the International Bureau with regard to changes of the name or contact details of a Competent Authority.

NOTES ON RULE 5: REQUIREMENTS CONCERNING THE APPLICATION

R5.01 Paragraph (1) corresponds to Rule 5(1) of the current Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

R5.02 The provisions of paragraphs (2) and (5) correspond to those of paragraphs (2) and (3) of Rule 5 of the current Lisbon Regulations, as adapted in accordance with the provisions of Article 5 of the Geneva Act of the Lisbon Agreement. Under item (vii) of paragraph (2)(a), where a Contracting Party of Origin provides for the registration of appellations of origin or geographical indications, the application is to indicate the date and registration number under which the appellation of origin or the geographical indication is protected in the Contracting Party of Origin. Where a Contracting Party grants protection by means of, for example, ministerial decrees or court decisions, the application is to indicate the title and date of such decree or decision.

R5.03 In view of the discussions at the ninth session of the Working Group, Rule 5(5) no longer provides for the possibility of including translations of the appellation of origin or the geographical indication in the application other than under Rule 5(2)(a)(iv). However, it should be noted that under Article 11 of the Geneva Act of the Lisbon Agreement – similarly to Article 3 of the current Lisbon Agreement – appellations of origin and geographical indications would be protected, *inter alia*, against their use in translated form.

R5.04 Rule 5(3) is based on Rule 5(3)(vi) of the current Lisbon Regulations, but transforms the optional provision, adopted by the Lisbon Union Assembly in September 2011 and in force since January 1, 2012, into a declaration-based requirement. In this regard, at the eighth and ninth sessions of the Working Group, reference was made to Rule 7(2) of the Common Regulations under the Madrid Agreement and Protocol as a model, in view of the crucial nature of the information specified in the provision under the national or regional legislation of a number of delegations, while the information is not required under the legislation of many other countries. Thus, Rule 5(3) provides that a Contracting Party may notify a declaration to the Director General stating that the information specified in the provision is required under its legislation and should be notified to it together with the notification of the international registration. Failure to provide the information will have the effect of a renunciation under Rule 16. In addition, paragraph (3) also specifies that the information can be provided later, in the context of a withdrawal of the renunciation under Rule 16(2).

R5.05 Rule 5(4) aims to accommodate those Contracting Parties where the protection of registered appellations of origin and geographical indications would be subject to a use requirement. In this regard, reference is made to the discussions at the eighth session of the Working Group. The provision allows the Contracting Parties concerned to require that notifications of international registrations be accompanied by a declaration of intention to use or a declaration of intention to exercise control over the use by others. Failure to provide the information will have the effect of a renunciation under Rule 16. The information can be provided later, as specified in Rule 16(2) and subject to Rule 16(4). Along the same lines, following a concern raised at the ninth session of the Working Group, Rule 5(4) also allows Contracting Parties which require an application to be signed by a person having legal standing to assert the rights conferred by the protection of the appellation of origin or the geographical indication, to notify such requirement to the Director General.

R5.06 Rule 5(5) makes certain disclaimers mandatory, for example if the exception referred to in the Agreed Statement concerning Article 11(2) is specified in the registration or other protection granting instrument in the Contracting Party of Origin. A solution to the issue that the International Bureau will not be in a position to check whether an application should contain such a disclaimer was proposed at the tenth session of the Working Group (document LI/WG/DEV/10/7, paragraphs 44 and 45).

NOTES ON RULE 6: IRREGULAR APPLICATIONS

R6.01 The provisions of this rule largely reproduce those contained in Rule 6 of the Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

R6.02 Rule 6(1)(d) was added so as to make sure that the non-payment of individual fees or the non-inclusion in the application of information as referred to in Rule 5(3) or (4) was not an oversight.

NOTES ON RULE 7: ENTRY IN THE INTERNATIONAL REGISTER

R7.01 Paragraph (1) is modeled on Rule 7(1) of the Lisbon Regulations but has been adapted to reflect the fact that the International Register would incorporate the registrations effected both under the Lisbon Agreement and the 1967 Act and under the Geneva Act of the Lisbon Agreement (see the Notes on Article 4 of the Act). As long as not all States party to the Lisbon Agreement or the 1967 Act have joined the Geneva Act of the Lisbon Agreement, the International Register should reflect for which States a registration is governed by the Lisbon Agreement and the 1967 Act or by the Geneva Act of the Lisbon Agreement. Of course, to the extent that an application originates in a Contracting Party that is party to both the Lisbon Agreement or the 1967 Act and the Geneva Act of the Lisbon Agreement, the International Bureau must examine the application not only on the basis of the requirements of the Geneva Act of the Lisbon Agreement, but also on the basis of the requirements that apply under the Lisbon Agreement and the 1967 Act.

R7.02 The provisions of paragraphs (2) and (3) of this rule largely reproduce those contained in Rule 7 of the Lisbon Regulations with regard to the contents of registrations, the registration certificate and the notification of new registrations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

R7.03 Paragraph (4) addresses the situation concerning international registrations of appellations of origin already recorded under the Lisbon Agreement or the 1967 Act, once the mutual relations between two States become governed by the provisions of Article 31(1) of the Geneva Act of the Lisbon Agreement.

NOTES ON RULE 8: FEES

R8.01 The provisions of Rule 8(1) are modeled on those contained in Rule 23 of the current Lisbon Regulations. However, in view of the discussions at the Diplomatic Conference, the amounts are not specified. These shall be fixed by the Assembly in accordance with Article 24(3)(a) of the Geneva Act of the Lisbon Agreement.

R8.02 Rule 8(1)(v), 8(2) and 8(3) implement Article 7(4) and are modeled on the corresponding provisions in the Common Regulations that apply in the context of the Madrid and Hague systems.

R8.03 Paragraphs (4) to (9) of Rule 8 are also modeled on the corresponding provisions applying in the context of the Madrid and Hague systems. They reflect the practice that also applies under the Lisbon Agreement and the 1967 Act.

NOTES ON RULE 9: REFUSAL

R9.01 The provisions of this rule reproduce those contained in Rule 9 of the current Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

R9.02 As regards the practice referred to in Notes 6.02 and 11.04 to the Act, by way of example, reference is made to paragraph 135 of the Report of the fourth session of the Working Group (document LI/WG/DEV/4/7).

R9.03 As discussed at the ninth session of the Working Group, Rule 9(2)(v) would not create any obligation for a Contracting Party to provide for the possibility of partial refusals. These provisions only apply where a Contracting Party is in a position, under its own legislation, to issue a partial refusal.

NOTES ON RULE 10: IRREGULAR NOTIFICATION OF REFUSAL

R10.01 The provisions of this rule reproduce those contained in Rule 10 of the current Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

NOTES ON RULE 11: WITHDRAWAL OF REFUSAL

R11.01 The provisions of this rule reproduce those contained in Rule 11 of the current Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

R11.02 Compared to the provisions of Rule 11 of the current Lisbon Regulations, paragraph (2)(ii) adds the requirement that the reason for the withdrawal be mentioned in the statement, in particular in case of partial withdrawals corresponding to partial refusals, as referred to in Rule 9(2)(v) of the Regulations under the Geneva Act of the Lisbon Agreement.

NOTES ON RULE 12: NOTIFICATION OF GRANT OF PROTECTION

R12.01 The provisions of this rule reproduce those contained in Rule 11*bis* of the current Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

R12.02 Compared to the provisions of Rule 11*bis* of the current Lisbon Regulations, paragraph (2)(b)(iii) adds the requirement that the reason for the withdrawal be mentioned in the statement, in particular in case of partial statements of grant of protection corresponding to partial refusals, as referred to in Rule 9(2)(v) of the Regulations under the Geneva Act of the Lisbon Agreement.

NOTES ON RULE 13: NOTIFICATION OF INVALIDATION OF THE EFFECTS OF AN INTERNATIONAL REGISTRATION IN A CONTRACTING PARTY

R13.01 The provisions of this rule reproduce those contained in Rule 16 of the current Lisbon Regulations, including the amendment adopted by the Assembly in September 2011, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

R13.02 Compared to the provisions of Rule 16(1) of the current Lisbon Regulations, item (iv) of paragraph (1) has been aligned with Rule 11(2)(ii) and Rule 12(2)(b)(iii).

NOTES ON RULE 14: NOTIFICATION OF TRANSITIONAL PERIOD GRANTED TO THIRD PARTIES

R.14.01 The provisions of this rule reproduce those contained in Rule 12 of the current Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement. Following the discussions at the seventh session of the Working Group, Rule 14(1)(iii) was amended by the introduction of the phrase concerning the submission of information on the scope of the transitional use.

NOTES ON RULE 15: MODIFICATIONS

R15.01 The provisions of this rule are modeled on those contained in Rule 13 of the current Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

R15.02 In Rule 15(1), a new item (vi) was added, so as to align the provision with those of Rule 16.

R15.03 Rule 15(2)(b) concerns the situation of an appellation of origin or geographical indication registered for part of a trans-border area, which has become a trans-border appellation of origin or geographical indication as a result of an agreement between the Contracting Parties where the trans-border area is situated.

NOTES ON RULE 16: RENUNCIATION OF PROTECTION

R16.01 The provisions of this rule are modeled on those contained in Rule 14 of the current Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

R16.02 As regards the phrase "in whole or in part" in Rule 16(1) and (2), the question arose at the seventh session of the Working Group as to whether it would be possible to issue a renunciation in respect of only some of the products covered by the international registration. However, at the ninth session of the Working Group, the Chair concluded that the phrase, as contained in Rule 16, relates to the number of Contracting Parties in respect of which protection is renounced.

R16.03 Paragraphs (2) and (4) were added in view of the possibility that the reason why protection was renounced may disappear subsequently. In that case, the renunciation can be withdrawn, subject to payment of the fee that applies in respect of modifications.

R16.04 As regards the reference to Rule 6(1)(d), reference is made to Note R6.02.

NOTES ON RULE 17: CANCELLATION OF AN INTERNATIONAL REGISTRATION

R17.01 The provisions of this rule largely reproduce those contained in Rule 15 of the current Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

NOTES ON RULE 18: CORRECTIONS MADE TO THE INTERNATIONAL REGISTER

R18.01 The provisions of this rule reproduce those contained in Rule 17 of the current Lisbon Regulations, as adapted in accordance with the provisions of the Geneva Act of the Lisbon Agreement.

NOTES ON RULE 19: PUBLICATION

R19.01 Compared to Rule 18 of the current Lisbon Regulations, the reference to the Bulletin has not been retained, as publication may, in the future, take place on the WIPO web site.

NOTES ON RULE 20: EXTRACTS FROM THE INTERNATIONAL REGISTER AND OTHER INFORMATION PROVIDED BY THE INTERNATIONAL BUREAU

R20.01 The provisions of this rule reproduce those contained in Rule 19 of the current Lisbon Regulations.

NOTES ON RULE 21: SIGNATURE

R21.01 This rule reproduces Rule 20 of the current Lisbon Regulations.

NOTES ON RULE 22: DATE OF DISPATCH OF VARIOUS COMMUNICATIONS

R22.01 The provisions of this rule largely reproduce those contained in Rule 21 of the current Lisbon Regulations. As regards the additional phrase referring to the Administrative Instructions, reference is made to Section 9 of the Administrative Instructions that apply under the current Lisbon Agreement.

NOTES ON RULE 23: MODES OF NOTIFICATION BY THE INTERNATIONAL BUREAU

R23.01 The provisions of this rule are modeled on those contained in Rule 22 of the current Lisbon Regulations.

NOTES ON RULE 24: ADMINISTRATIVE INSTRUCTIONS

R24.01 The provisions of this rule largely reproduce those contained in Rule 23*bis* of the current Lisbon Regulations. However, the reference to the Bulletin has not been retained, for the reason mentioned in Note R19.01.

LI/DC/INF/1

February 13, 2015 (Original: English)

GENERAL INFORMATION

prepared by the International Bureau

Editor's Note: Document LI/DC/INF/1 contained practical information concerning the venue and conference facilities of the Diplomatic Conference.

LI/DC/INF/1 CORR.

May 8, 2015 (Original: English)

CORRIGENDUM TO DOCUMENT LI/DC/INF/1
prepared by the Secretariat

Editor's Note: Document LI/DC/INF/1 CORR. contained information on the location of computers with internet access and printers at the conference venue.

LI/DC/INF/2

May 28, 2015 (Original: French/English)

LIST OF PARTICIPANTS

prepared by the Secretariat

Editor's Note: Document LI/DC/INF/2 contains the List of Participants. It is reproduced on pages 656 to 709 of these Records.

LI/DC/INF/3

May 12, 2015 (Original: French/English)

OFFICERS AND COMMITTEES

prepared by the Secretariat

Editor's Note: Document LI/DC/INF/3 contains the List of Officers and Committees. It is reproduced on pages 710 to 713 of these Records.

LI/DC/INF/4

May 8, 2015 (Original: English)

TENTATIVE TIMETABLE

prepared by the Secretariat

It is proposed that the following agenda items be considered on the following days:

Monday, May 11	10:00 a.m. – 1:00 p.m. – Opening Ceremony – Plenary: Agenda items 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 3:00 p.m. – 6:00 p.m. – Plenary: Agenda item 10
Tuesday, May 12	10:00 a.m. – 1:00 p.m. – Main Committee I 3:00 p.m. – 6:00 p.m. – Main Committee I
Wednesday, May 13	9:00 p.m. – 10:00 a.m. (before formal meeting begins) – Credentials Committee 10:00 a.m. – 1:00 p.m. – Main Committee I 3:00 p.m. – 6:00 p.m. – Main Committee I
Thursday, May 14	10:00 a.m. – 1:00 p.m. – Plenary: Agenda item 11 – Main Committee I 3:00 p.m. – 6:00 p.m. – Main Committee I
Friday, May 15	08:30 a.m. – 10:00 a.m. – Steering Committee 10:00 a.m. – 1:00 p.m. – Main Committee II

	<p>3:00 p.m. – 6:00 p.m. – Main Committee I</p> <p>6:00 p.m. – 7:00 p.m. – Credentials Committee</p> <p>7:00 p.m. – 10:00 p.m. – Drafting Committee</p>
[Saturday, May 16	<p>10:00 a.m. – 1:00 p.m. – Main Committee I</p> <p>3:00 p.m. – 6:00 p.m. – Main Committee II</p>
Sunday, May 17]	<p>10:00 a.m. – 1:00 p.m. – Main Committee II</p> <p>3:00 p.m. – 6:00 p.m. – Main Committee I</p> <p>7:00 p.m. – 10:00 p.m. – Drafting Committee</p>
Monday, May 18	<p>10:00 a.m. – 1:00 p.m. – Plenary: Agenda item 13 – Main Committee II</p> <p>3:00 p.m. – 6:00 p.m. – Main Committee II</p> <p>7:00 p.m. – 10:00 p.m. – Drafting Committee</p>
Tuesday, May 19	<p>10:00 a.m. – 1:00 p.m. – Drafting Committee</p> <p>3:00 p.m. – 6:00 p.m. – Main Committee I</p> <p>7:00 p.m. – 10:00 p.m. – Main Committee I</p>
Wednesday, May 20	<p>10:00 a.m. – 1:00 p.m. – Plenary: Agenda item 12 – Plenary: Agenda items 14, 15 and 16</p>

TEXT OF THE CONFERENCE DOCUMENTS OF THE "LI/DC" SERIES

	3:00 p.m. – 6:00 p.m. – Plenary: Agenda item 16 7:00 p.m. – 10:00 p.m. – Plenary: Agenda items 16 and 17 – Closing Ceremony
Thursday, May 21	10:00 a.m. – 1:00 p.m. – Signature Ceremony: Final Act and Treaty

Please note that any of the agenda items may be called up on any of the days from May 11 to 21, 2015, subject to a decision by the Chair(s), in accordance with the Rules of Procedure.

Note: Below are the topics of the Agenda (document LI/DC/1 Prov.)

1. Opening of the Conference by the Director General of WIPO
2. Consideration and adoption of the Rules of Procedure
3. Election of the President of the Conference
4. Consideration and adoption of the agenda
5. Election of the Vice-Presidents of the Conference
6. Election of the members of the Credentials Committee
7. Election of the members of the Drafting Committee
8. Election of the Officers of the Credentials Committee, the Main Committees and Drafting Committee
9. Admission of Observers
10. Opening declarations by Delegations and by representatives of Observers
11. Consideration of the first report of the Credentials Committee
12. Consideration of the texts proposed by the Main Committees
13. Consideration of the second report of the Credentials Committee
14. Adoption of the Treaty and the Regulations
15. Adoption of any recommendation, resolution, agreed statement or final act

16. Closing declarations by Delegations and by representatives of Observers
 17. Closing of the Conference by the President²⁶
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²⁶ Immediately after the closing of the Conference, the Final Act, if any, and the Instrument will be open for signature.

SUMMARY MINUTES OF THE CONFERENCE

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PLENARY OF THE DIPLOMATIC CONFERENCE FOR THE
ADOPTION OF A NEW ACT OF THE LISBON AGREEMENT FOR THE PROTECTION
OF
APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION

President: Mr. Ambassador Luis Enrique Chávez Basagoitia (Peru)

Secretary: Mr. Francis Gurry (WIPO)

First Meeting Monday, May 11, 2015 Morning
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Opening of the Conference

1. Mr. GURRY (Director General of WIPO) welcomed the participants and recalled that the proposed revision of the Lisbon Agreement had been prepared by the Working Group on the Development of the Lisbon System, which had held 10 sessions between March 2009 and October 2014, in view of the need to look for improvements which would make the system more attractive for States and users, while preserving the principles and objectives of the Lisbon Agreement. The result of the Working Group's work was the Basic Proposal for a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration (LI/DC/3) and its Regulations. Mr. Gurry further recalled that the objectives expressed by the Assembly of the Lisbon Union were to refine and modernize the system, while preserving its principles and objectives, and to facilitate the accession of competent intergovernmental organizations. Underlining that both the conclusion of a new treaty and the revision of an existing treaty were major events in the life of the organization responsible for the administration of the treaty, Mr. Gurry emphasized that the Diplomatic Conference presented an opportunity and a challenge. The opportunity was the modernization of a system that was 57 years old, i.e., the Lisbon Agreement concluded in 1958. In that regard, he indicated the possibility of taking into account the many developments that had occurred in the world throughout those 57 years, including a wave of globalization which had seen markets open and international trade expand and a heightened role for brands and identifiers in the markets that constituted the globalized or globalizing economy. Brands and identifiers were indispensable signals to consumers in the global economy, which had multiple and extremely sophisticated means of communication. One could also notice an enhanced appreciation of the value and importance of specificity and distinctiveness in that context. In the interests of multilateralism, the challenge for WIPO was that the revision should produce a Lisbon System that would be attractive to the full membership of the Organization. Indeed, one of the objectives of the revision was to increase the membership of the Lisbon System well beyond its historically relatively low level of participation amongst the Member States of WIPO. Pointing out that the subject matter of the revision was not without controversy, he underlined that the heavy burden resting on the shoulders of the negotiators was to achieve an internationally attractive and modernized

Lisbon System. He appealed to all Delegations for their goodwill and their patience throughout the upcoming two weeks to ensure the achievement of this result.

Consideration and Adoption of the Rules of Procedure

2. Mr. GURRY (Director General of WIPO) drew the attention of the Conference to document LI/DC/1 Prov. 2 containing the Revised Draft Agenda of the Diplomatic Conference. He then turned to item 2 of the Revised Draft Agenda (Consideration and Adoption of the Rules of Procedure) and recalled that the Rules of Procedure of the Diplomatic Conference contained in document LI/DC/2 Prov. had been approved by the Preparatory Committee of the Diplomatic Conference. He also indicated that these were the Rules of Procedure that he should apply to the proceedings under item 2 of the Revised Draft Agenda in accordance with the practice that had been followed in every diplomatic conference of WIPO or held under the auspices of WIPO. He also recalled that the Rules of Procedure mentioned requisite majorities assuming that they would be applicable to the adoption of Draft Rules of Procedure and, finally, that these Draft Rules of Procedure had been prepared and approved by the Preparatory Committee, and recommended for adoption by the Diplomatic Conference. He noted that, in addition to document LI/DC/2 Prov., a number of Delegations had submitted a proposal for an amendment to the Draft Rules of Procedure distributed in all languages as document LI/DC/9.

3. Mr. NIEMTCHINOW (France) took the floor on behalf of the following member countries of the Lisbon Union: Bosnia and Herzegovina, Bulgaria, Burkina Faso, Congo, Costa Rica, Cuba, Czech Republic, Former Yugoslav Republic of Macedonia, France, Gabon, Georgia, Haiti, Hungary, Iran (Islamic Republic of), Italy, Mexico, Montenegro, Nicaragua, Peru, Portugal, Republic of Moldova, Serbia, Slovakia, Togo and Tunisia. He expressed the wish that the internal rules of the diplomatic conference of the Lisbon Union would be adopted by consensus in the version submitted, for the legal reasons developed in the collective mail addressed to the Director General of WIPO on May 5, 2015 and to ensure the start of substantive work at the earliest. He recalled that, during the seven years of effort by the Lisbon Working Group, the Member States of the Lisbon Union had always maintained the principle of inclusiveness and worked on the basis of consensus that made it possible to open the diplomatic conference of the Lisbon Union. He added, on behalf of almost all Member States of the Lisbon Union, in the same positive spirit of consideration and respect for all and despite the rules of procedure which already linked them provisionally, that these countries had accepted that observer and special delegations which so desire be allowed to take the floor on Item 2 of the agenda.- This overture was made in a spirit of transparency towards all members of WIPO, and the same spirit would guide these Member States of the Lisbon Union throughout the diplomatic conference. Although the draft rules of procedure already provided members of the Lisbon Union with the means to adopt it definitively and immediately through a vote, the countries on whose behalf he was speaking were willing to grant speaking time to observer countries wishing to take the floor. He trusted that they would manage that time well enough to limit their comments to this item of the agenda. The set objective was the adoption by Member States of the Lisbon Union of the rules of procedure, as submitted, without amendment, during that morning session, in order to move on to substantive discussions.

4. Ms. HAMAMOTO (United States of America), speaking on behalf of a group of co-sponsor Delegations, namely the Delegations of Argentina, Australia, Canada, Chile, Japan, New Zealand, Panama, Republic of Korea, Saudi Arabia, Singapore, the United States

of America and Uruguay, introduced a written proposal to amend Rule 2 of the Draft Rules of Procedure in LI/DC/2 Prov. to provide for all WIPO members to be considered “Member Delegations” during this Diplomatic Conference. As discussed in the Preparatory Committee in October 2014, WIPO diplomatic conferences were normally open for full participation and voting by all WIPO members. However, the current Draft Rules of Procedure limited full participation and voting rights to current Lisbon members only. While excluding most WIPO members from participation, the Draft Rules of Procedure allowed two non-WIPO members to have more rights to negotiate than WIPO members that were not Lisbon members. For over 20 years, WIPO diplomatic conferences, including a diplomatic conference to adopt a New Act of an existing treaty (the Hague Agreement), had allowed for equal participation of all WIPO members. For these reasons, and for the reasons that would be elaborated in their individual statements, the co-sponsors of this proposal continued to propose revising document LI/DC/2 Prov. to allow for full and equal participation by all WIPO members during the Diplomatic Conference.

5. Mr. D’ALOTTO (Argentina), speaking on behalf of a group of WIPO Member States who were observers to the meetings of the Lisbon Union, namely the Delegations of Argentina, Australia, Chile, Japan, New Zealand, Panama, the Republic of Korea, the United States of America and Uruguay, wished to state for the record that these Delegations objected to the closed, non-inclusive method of work being advocated by most of the Lisbon members for this Diplomatic Conference. They were dismayed and concerned that a very small number of WIPO members – less than 15% of the WIPO membership – would deviate from WIPO’s established practice of consensus, and inclusive and member-driven norm-setting, by adopting a method of work that closed off equal participation by 160 of their multilateral partners. Furthermore, this method of work would also contradict the spirit of Recommendation 15 of the Development Agenda that indicated that norm-setting activities should be “inclusive and member-driven and take into account different levels of development”, as well as “a participatory process, which took into consideration the interests and priorities of all WIPO Member States”. They understood this principle to mean substantive participation, not participation only as mere observers. Many of the Delegations on behalf of which he spoke had sent delegations of experts to Geneva this week knowing that there was one final chance for the Lisbon members to make the choice to advance an inclusive and consensus-based approach for this Diplomatic Conference that would respect the interests and perspectives of all WIPO members in the development of the new international norms that Lisbon members were striving to create during the next two weeks. The broader WIPO membership had worked constructively with the Lisbon Union to date, and they genuinely wished to make a good faith contribution to this negotiation. This was not only because certain subject matter for discussion during this Diplomatic Conference – the protection of geographical indications – was of interest to all WIPO members. It was also because it had been a consistent and well-established practice for the past 25 years at WIPO, a multilateral (not plurilateral) institution, for all WIPO Member States to enjoy equal status in WIPO diplomatic conferences. Multilateral participation was an essential ingredient in the negotiation of WIPO treaties. Many of the Delegations on behalf of which he spoke had viewed this process as an opportunity to take into consideration the interests and priorities of all WIPO Member States and as a result, to promote the interests of, and improve the services for, all of their stakeholders, which included intellectual property rights holders, agricultural producers, and industrial producers who were all extremely significant contributors to their respective economies. This had been a core objective behind most WIPO treaties. During the Preparatory Committee in October, it was quite clear that there was a globally representative interest in taking advantage of this opportunity, as demonstrated by the presence and voices of

colleagues from all over the world and from all levels of development who agreed with the importance of inclusiveness and equality in norm-setting. If Lisbon members expected that WIPO - as an institution and Organization of 188 Member States - would embrace this New Act, the broader WIPO membership should be involved genuinely and meaningfully – in other words, equally – in the negotiation of the Act and the establishment of this new instrument. However, it appeared that the openness that all had worked hard to share during the sessions of the Working Group would not be provided at the Diplomatic Conference and, thus, the deliberations were likely to proceed in a direction that would not endeavor to find common ground and that would not attempt to bridge differences. At the Diplomatic Conference, according to the Draft Rules of Procedure, the Delegations on behalf of which he spoke would have a lower status than they had had as observers at the sessions of the Working Group, and even lower than non-WIPO members called “Special Delegations”, as they would not be able to make proposals to amend the Basic Proposal, or participate in informal working groups during the Diplomatic Conference. It did not have to be that way, however, the Delegations on behalf of which he spoke strongly encouraged the Conference to consider positively the choice to hold a diplomatic conference equally inclusive of all WIPO members. The Delegations on behalf of which he spoke believed that international law allowed for this choice to be made. To confirm their understanding, he requested the Legal Counsel of WIPO to provide a legal opinion as to whether the Lisbon Union was required by either the Lisbon Agreement or the Vienna Convention on the Law of Treaties to hold a closed diplomatic conference, or could instead choose a path of equal participation by all WIPO members.

6. Ms. TAN (Singapore) said that Singapore was a co-sponsor of the proposal advocating an open diplomatic conference. She stated that the Delegation of Singapore believed that the Rules of Procedure for the Lisbon Diplomatic Conference should allow for full and equal participation by all WIPO members. She recalled that the Lisbon Union members had expressed the wish to modernize and improve the Lisbon Agreement and to produce significant benefits to attract a broad range of perspective new members. If that was indeed the case, the Delegation wondered why they would choose to refuse full and equal participation in the Diplomatic Conference by all WIPO members. Some Lisbon Union members asserted that a closed diplomatic conference was consistent with the Lisbon Union's international rights and obligations. However, they conveniently omitted acknowledging that an open diplomatic conference would not necessarily go against their international commitments. In fact, holding an open diplomatic conference was not incompatible with general international law and practice for multilateral treaties, especially with regard to WIPO treaties. The Lisbon Union clearly had a choice and it would be unfortunate should it choose the less inclusive option. It had been WIPO's established practice in the past 25 years that all WIPO members participated on a full and equal footing at all WIPO diplomatic conferences regardless of whether or not they were parties to a particular treaty. This practice was aimed at upholding the important principles of inclusiveness and transparency, critical for ensuring the integrity and credibility of WIPO. These principles were especially relevant when it pertained to the development and negotiation of international norms. It was no secret that the verdict was still out on whether or not the adoption of the New Act of the Lisbon Agreement amounted to a simple revision or a substantive change of the treaty. The Delegation of Singapore urged the Lisbon Union members to reconsider the option of an open diplomatic conference and to allow full and equal participation by all WIPO members. Otherwise, it would ultimately render to the Lisbon Union only a pyrrhic victory, as all of the WIPO members, including the Lisbon Union, would have to live with the long-term consequences for the integrity of the Organization and the system as a whole.

7. Ms. HAMAMOTO (United States of America) said that the Delegation of the United States of America, as a member of the World Intellectual Property Organization (WIPO) and a strong supporter of its fundamental objectives and rules, was deeply troubled by what had transpired at WIPO in the context of these negotiations to expand the Lisbon Agreement to include geographical indications. Her Delegation was concerned by the precedent that the Lisbon Agreement parties had set and sought to continue at this Diplomatic Conference. This was about more than the legitimacy of the Lisbon Agreement itself. This issue had alarming implications for the future of WIPO as an Organization. The Lisbon Union members had chosen to depart from fundamental and longstanding principles of inclusiveness and participation by all WIPO members in norm setting. They had chosen to deny an equal and meaningful voice in the negotiations to the vast majority of WIPO members, to limit them to observer status and to include the largest GI *demandeur*, the European Union, which was not a party to the Lisbon Agreement. This broke with a long tradition of open participation in WIPO diplomatic conferences. All WIPO members should be able to participate equally in this Diplomatic Conference, as they had done in all diplomatic conferences at this Organization for the past 25 years. Some Lisbon members had argued that two tiers of WIPO membership was justified or even required under international rules. The Delegation of the United States of America did not agree and was not alone. All Delegations should be entitled to preserve their sovereign rights and defend their national interests in WIPO and several had written to the Lisbon Union members to state the importance of that principle. The Congress of her country had also written to the Director General to express strong concerns. There was nothing in international law that excused excluding the vast majority of WIPO members from a WIPO treaty negotiation. A small number of WIPO members should not be able to declare themselves to be more equal than others. If international rules provided such a justification, the question was why WIPO members had repeatedly chosen the opposite course of inclusiveness and participation; and why full participation rights had been granted to WIPO members that were not members of the treaty being updated. Of course, past diplomatic conferences had not been inconsistent with international law; and geographical indications did not merit different treatment than copyright and trademarks. The long-term interest of the many, and of WIPO, should not be sacrificed for the short-term interest of the few. The goal in this context should be an inclusive treaty bridging different national approaches and allowing participation by the entire WIPO membership. She further pointed out that her Delegation had engaged throughout the development of these negotiations but, as 160 other WIPO members, it had always been observer. Many Delegations had raised their strong concerns with both this process and the current text in the meetings of the Lisbon Union, including the Preparatory Committee, the Coordination Committee, the Budget Committee and the General Assembly. With regard to the Draft Rules of Procedure as well as the text of the Basic Proposal, which omitted fundamental due process rights of objection, her Delegation had had no ability to engage in the negotiations in a meaningful way. The Draft Rules of Procedure had effectively stripped 160 WIPO members of their rights to vote, propose and second amendments to the Basic Proposal; to participate in working groups, to serve as elected officers or on committees or to count towards a quorum; to raise points of order or to adjourn or close a debate. She said that her Delegation had heard complaints from the national businesses for years that obtaining protection for their geographical indications in other countries was bewildering and uncertain. The United States of America had valuable geographical indications and stakeholders who were seeking protection in their export markets had repeatedly approached the government of her country to intervene with foreign governments that require the government itself to negotiate protection for their geographical indications, which were private property rights. Trademark owners from the United States of

America of products bearing common names had approached the government to intervene with foreign governments to prevent their rights being taken away or diminished in established export markets, simply because a list of geographical indications was negotiated for this market. This mechanism of seeking or objecting to geographical indication protection in foreign markets stood in stark contrast to the way that other global IP registration systems operated. If the Lisbon members sought a sustainable and broadly supported international filing mechanism working with any type of protection system for geographical indications, more flexibility would be required than what her Delegation had seen from the Lisbon members so far. Such flexibility would not be possible without full participation and contributions by all WIPO members. As a result, her Delegation and 11 other countries had resubmitted a proposal to amend Rule 2 of the Draft Rules of Procedure contained in document LI/DC/2 Prov. to the effect that all WIPO members would be considered Member Delegations. The history of the past discussions on geographical indications at WIPO brought into sharp focus the departure that the Lisbon Union was taking from consistent WIPO practice in deciding to revise the Lisbon Agreement as an exclusionary small club.

8. She went on to refer to a survey that the International Bureau had conducted, in 1972, at the request of the Lisbon Union, on the protection of appellations of origin and geographical indications among the countries of the Paris Union for the Protection of Industrial Property. Significantly, this survey had been sent to all members of the Paris Union, including those that were not also Lisbon Union members, in an effort to inclusively obtain information about different views and systems. In 1974, WIPO had invited all Paris Union members to attend the Committee of Experts on the International Protection of Appellations of Origin and Other Indications of Source, which had been convened to discuss whether to advance the protection for geographical indications through the revision of the Madrid Agreement on False Indications of Source, a revision of the Paris Convention, a revision of the Lisbon Agreement or the creation of an entirely new treaty. In 1975, the International Bureau had analyzed the similarities and differences between the draft treaty that was being discussed and the Lisbon Agreement, finding that the conclusion of a new treaty was more appropriate than a revision of the Lisbon Agreement, due to the significance of the changes being proposed, most of which were now also contained in the current Basic Proposal. Her Delegation raised this historical perspective to illustrate the divergent practices between now and then: a) all WIPO members had been invited to join the Committee of Experts that discussed the question of protection for geographical indication; b) a text had been developed with many of the same elements that were now in the current Basic Proposal; c) the International Bureau had advised the Committee of Experts that a new treaty was the appropriate approach, based on the differences between the texts at issue; d) all WIPO members in the Committee of Experts had been empowered to decide what mechanism should be pursued. This divergence could be remedied today by embracing the presumption of inclusiveness enjoyed by all WIPO members in the discussions that had taken place in the 1970s. Thus, WIPO members were potentially on the brink of a momentous event, as at the end of the coming two weeks, a global geographical indication filing system could be concluded appropriately balancing interests of all WIPO members and providing more certain protection for geographical indication owners around the world. However, her Delegation was concerned that this was not the direction in which it seemed to be heading. There were critical steps needed to reach this goal. The first was full participation rights for all WIPO members. Full participation rights would be consistent with the New Act being a new treaty, rather than a revision. The proposed amendment of the Rules of Procedure should be adopted. Her Delegation viewed WIPO as a member-driven, inclusive Organization. If the present discussion demonstrated otherwise, WIPO would face a serious credibility problem.

If negotiations were not inclusive, it could not be claimed that the resulting norms represented a legitimate multilateral WIPO treaty. The second necessary step was to improve the Basic Proposal, so as to create a truly global system. Given that the Lisbon Union had not invited all WIPO members to be full participants in these negotiations, many geographical indication experts were not present. Their governments considered remote the probability of an open diplomatic conference and could not justify sending experts to attend a meeting where they would not be permitted to participate. Therefore, there was already a profound deficit. This process had effectively excluded many whose expertise and insight would have improved the results. Nonetheless, many Delegations were present with experts who were ready to fully participate and create a new filing system that filled the needs of all and not just those of a few. Finally, she said that her Delegation looked forward to working with all Delegations present to reach an acceptable outcome from this Diplomatic Conference.

9. Mr. MCCORMICK (Australia) said that Australia was a sponsor of the proposed amendments to the Rules of Procedure for this Diplomatic Conference and was also part of the joint statement presented by the Delegation of Argentina. He recalled that WIPO Member States had repeatedly chosen an inclusive and consensus-based approach to the development of international intellectual property law, respecting the interests and perspectives of all Member States. For the past 25 years, this basic principle had guarded the development of international intellectual property law in this global institution. The WIPO Development Agenda included specific recommendations on the development of international norms. All Member States should recognize the importance of this principle for all. His country recognized that the protection of geographical indications was a subject matter of importance to a wide group of WIPO Member States and that the proposed revision of the Lisbon System would provide a mechanism for traders to protect their geographical indications in their export markets. However, it would also include substantive obligations for that protection. Decisions made by this Diplomatic Conference could affect fundamental intellectual property principles, right holders, agriculture producers and industrial producers on an international scale. However, if the Rules of Procedure were agreed as they stood, the 28 members of the Lisbon Union convening this Diplomatic Conference would alone seek to create a new international system for the protection of geographical indications. As this would affect all, whether members of the Lisbon Union or not, it was beyond question that in such circumstances all WIPO members had a legitimate right to an equal say at this Diplomatic Conference. His Delegation had spoken directly with many Lisbon Union members since these Draft Rules of Procedure were agreed in October 2014 and was now co-sponsoring the request to amend them at this Diplomatic Conference. His Delegation understood that existing Lisbon Union members had a genuine interest in the development of the Lisbon System and feared that opening up the Diplomatic Conference to the wider membership might undermine this interest. Nevertheless, his Delegation was disappointed that its interest in these negotiations was not similarly respected. His Delegation had worked constructively with the Lisbon Union to date and wished to continue to make a good faith contribution with confidence that its interests would be reflected in any outcome. This had been an open and inclusive process. However, without full and equal participation of all Member States of WIPO at this Diplomatic Conference, its outcome risked being viewed as less than legitimate. Lisbon Union members could not claim to represent his Delegation's interests. As regards the view that the Lisbon Union was entitled under international law to keep this Diplomatic Conference closed to equal participation, he said that his Delegation did not wish to get into a debate about the intricacies of international law. Irrespective of the legitimacy of any decision to keep this Diplomatic Conference closed, just because it could be kept closed did not mean that it should be kept closed. Lisbon members had a choice and could exercise that

choice in favor of an inclusive multilateral outcome. International law did not prevent them from doing so. He therefore strongly urged Lisbon Union members to reconsider their approach. WIPO had been historically inclusive and the consensus-based approach to international norm-setting was well established. Legitimate, inclusive international norms required genuine and meaningful involvement of all interested parties. The participation of the Delegation of Australia to date had always been constructive and would continue to be so. But the case for equal participation was compelling and should not be set aside lightly by a small group of Member States in multilateral rule setting institutions such as WIPO.

10. Mr. FRIED (Canada) said that his Delegation shared the concern expressed over the fact that Observer Delegations were not being granted voting rights over the text. Secondly, the proposed amendments to the Rules of Procedure would facilitate the discussion. Finally, the proposed amendments to the Lisbon Agreement, which reflected the interests of a small subgroup of WIPO members, could have a significant impact on non-parties. For example, there were potential impacts on the international trademark system and also on the work of other WIPO bodies, such as the Standing Committee on Trademarks, Industrial Designs and Geographical Indications and the work of bodies beyond WIPO, such as the WTO TRIPS Council, which was in the midst of considering a global geographical indication register. The Rules of Procedure did not allow for full participation by the members of all these other bodies. This conundrum resulted from the fact that important internationally legally required procedural steps had not been followed when developing the Rules of Procedure for the Diplomatic Conference. The WIPO Convention itself required the Coordination Committee, prior to deciding to convene a diplomatic conference, to provide advice or views and the Lisbon Agreement itself provided that the Lisbon Union members should have made its decision after having heard the advice of the Coordination Committee on matters which were of interest also to other unions. The impact of the potential revision of the Lisbon Agreement created and had triggered a great deal of interest to members of other unions and, despite this fact, the procedure had not been followed. He recalled that the original premise of the Lisbon Working Group had been to pursue administrative and procedural improvements. However, the decision of the Lisbon members alone had now changed the nature of the consideration by seeking to create new rights for geographical indications through the proposed register. WIPO was founded on principles of inclusiveness and of equality of Members, which remained necessary in the spirit of good governance of the organization and the development of sound and balanced rules on the protection of intellectual property rights. Diplomatic conferences had long been recognized as a very important means of ensuring that these principles of inclusiveness and equality were put into practice and as a means to ensure that the diverse interests of various WIPO members were taken into account. As had already been pointed out, there was no legal or procedural requirement for this Diplomatic Conference to be closed. It seemed to be a deliberate and troubling choice of the Lisbon members to depart from consistent past practice. All Delegations, as WTO members, shared an interest in advancing rules on different aspects of intellectual property rights. WIPO was the most suitable forum for developing such rules. It was natural that some members might be more interested in advancing certain intellectual property rules than others. Although interested members should be able to explore rules among the entire WIPO membership that might not require participation of the whole membership at the end of the day, adopting rules that affected non-parties over their objections and without their consent, without the advice of the Coordination Committee, might undermine the legitimacy of the outcome. He expressed the concern of his Delegation that this was setting a negative precedent for future WIPO negotiations. If it became common practice for certain parties to negotiate rules among themselves without consideration of their effect on non-parties, on other bodies and on other

institutions, this would lead members to question whether WIPO was a legitimate venue in which to develop such rules. For all these reasons, the Delegation of Canada was co-sponsoring the proposed amendment of the Rules of Procedure and urged Lisbon members to amend the rules in accordance with that proposal, so as to allow full participation by all WIPO members.

11. Ms. LESLIE (New Zealand) confirmed her Delegation's support for the joint statement presented by the Delegation of Argentina, requesting that the present Diplomatic Conference be open to all WIPO members. Inclusiveness was a principle that New Zealand, as a small country, held dear and also regarded as a fundamental pillar of WIPO in its normative work. Indeed, as others had mentioned, it had been over 20 years since a non-open diplomatic conference had been held under the WIPO umbrella. Her Delegation was, therefore, gravely concerned about the negative effects on the future good governance of the Organization, should the present Diplomatic Conference go ahead without the full participation of all WIPO members, in particular given the concerns raised by others regarding the process that had been followed to date. The proposed amendments to the Lisbon Agreement intended to expand the scope of the existing Agreement so as to establish new international norms regarding geographical indications and would amount to more than just technical amendments, as they would fundamentally change the nature of the Agreement and *de facto* amount to the creation of a new treaty. In this regard, all WIPO members had an interest in the setting of intellectual property norms, not only the members of the Lisbon Union. Therefore, the Delegation of New Zealand strongly believed that all WIPO members should have the opportunity to participate in the shaping of those norms and ensure that these norms would be consistent with international law. As one of the stated objectives of the amendment process was to facilitate an expanded membership of the Lisbon Agreement, the Delegation of New Zealand also saw it as being in the interest of the Lisbon members themselves to enable maximum participation in the shaping of the Agreement. Thus, the process could result in the diverse system that Lisbon members said they were seeking to establish in order to encourage others to join the Agreement. For these reasons, the Delegation of New Zealand supported the joint proposal to amend the Draft Rules of Procedure of the present Diplomatic Conference, so as to allow full participation in the Conference by Observer Delegations. Adoption of the proposed amendment would ensure that the present Diplomatic Conference would be fully inclusive and enable all interested WIPO members to actively and fully engage in the shaping of any future geographical indication protection system.

12. Mr. OTABE (Japan) said that his Delegation associated itself with the joint statement delivered by the Delegation of Argentina and echoed the concerns voiced by other Delegations. The Delegation of Japan had joined the co-sponsorship of the alternative proposal to the Draft Rules of Procedure, i.e., to seek an open diplomatic conference, because of Japan's systemic interests in WIPO. As the issues under discussion might have a major impact on all WIPO members, they should be discussed by all WIPO members in an inclusive and transparent manner. The Delegation of Japan was of the view that the expansion of the protected subject matter to geographical indications would have a considerable impact on WIPO members in various respects, in particular as the proposed New Act would affect WIPO members' business practices based on other intellectual property systems, such as trademarks. As regards the aspect of the financial sustainability of the system, he pointed out that the Lisbon System relied on the overall WIPO budget, including revenues from the Madrid System. This meant that the proposed significant change of the system would have an impact on the regular budget of WIPO, as the costs required for the operation of the Lisbon System would increase due to a significant number of new applications for the international

registration of geographical indications. Consequently, the Delegation of Japan sincerely hoped that the Lisbon members would choose the option of having an open diplomatic conference which would allow full substantive participation by all WIPO members.

13. Mr. KUMAR (India) associated his Delegation with the group of countries in favor of an equal, open and inclusive participation of Observer States during the Diplomatic Conference, with an equal opportunity to contribute meaningfully during the two week long deliberations. The fact that the Lisbon Diplomatic Conference proceedings would also encompass geographical indications would materially change the scope and content of the New Act to be arrived at. As the Delegation of India had also articulated during the preparatory meeting in October 2014, this went beyond a mere updating and amending of the existing provisions of the Lisbon Agreement. He expressed the hope that the proposed amendment to the draft Rules of Procedure would be accepted, so that the principles of inclusiveness and equality would be upheld.

14. Mr. Héctor CASANUEVA (Chile) stated that the Delegation of Chile echoed and fully shared the comments made by the delegations of the United States, Argentina, Singapore, Australia, Canada and New Zealand. He declared that, from the very beginning of the revision process, his country had participated actively, preparing text proposals that made it possible to fulfill the mandate of the Working Group, namely to reach an agreement attractive enough to bring in new members. The proposals had been analyzed and discussed during the working sessions that preceded the Conference, attended by members and non-members of the Lisbon Agreement. He indicated that by failing to consider the proposal of a very significant group of WIPO members during the Preparatory Conference, the rules of procedure currently proposed threatened the outcomes of the hard work done by this group of members with professionalism and good faith. He stated that there were certain specific topics proposed by Chile that his delegation would like to see reflected in the outcomes of the Diplomatic Conference but which he did not think was likely to happen, considering the proposals made by members of the Lisbon Agreement. He stressed that the foregoing demonstrated the crucial importance of maintaining WIPO's institutional tradition of participating on equal terms in this diplomatic conference; that is with the same constructive spirit that his country had demonstrated during the sessions of the Lisbon Working Group. Consequently, the Delegation of Chile fully supported the approach presented by the Delegation of Argentina on its behalf name and on behalf of the rest of the countries and designated members.

15. Mr. EOM (Republic of Korea) thanked the Director General of WIPO and the Secretariat of WIPO for the preparation of the Diplomatic Conference. He recalled that the Republic of Korea was one of the co-sponsors of the proposal requesting that the Diplomatic Conference be open to all WIPO Member States with equal participation. He echoed the statement made by the Delegation of Argentina on behalf of a group of WIPO Member States. A diplomatic conference was the main gate for establishing international law. Therefore, providing inclusiveness and achieving consensus were very important factors to ensure the legitimacy of the result. He underlined that a diplomatic conference was not a place like a court where laws were applied, but rather a space like a Parliament where international law was discussed and concluded on the basis of political negotiations. From this perspective, achieving compromise with the relevant parties was much more important than just following the letter of certain provisions concerning the revision of a treaty. Referring to the Basic Proposal, in particular the provisions stipulating that the New Act would enter into force after five accessions or ratifications and that any State party to the Paris Convention was eligible to

become a Contracting Party of this New Act, his Delegation considered it questionable that countries which were members of the Paris Convention, such as the Republic of Korea, would not be able to participate in the discussion and decision-making on this proposed New Act with equal rights. He underlined that geographical indications constituted a much broader concept than appellations of origin and that the proposed New Act would introduce a definition, and stipulate protection, in respect of geographical indications. Countries such as the Republic of Korea had their own legal systems to protect geographical indications. His Delegation wondered how it could be said that the proposed New Act would be just a revision of the Lisbon Agreement and for what reason countries, such as the Republic of Korea, were excluded from a discussion and decision-making process at a diplomatic conference that would establish international law in respect of intellectual property rights protected in their own territories. The Delegation of the Republic of Korea was of the view that, as an indispensable condition, all WIPO Member States should equally participate in the discussion and decision-making process and that the Draft Rules of Procedure should be modified to that effect. If the Draft Rules of Procedure had been the same as those of the past 25 years, no debate on this question would have been needed. It was not acceptable that only the Lisbon Union members would have full participation rights. Moreover, limited participation rights would undermine the legitimacy of the end result. He concluded by expressing the hope that, with equal participation and decision-making by all WIPO Member States, the Diplomatic Conference would be able to arrive at a mutually agreeable solution on this matter.

16. Mr. FASEL (Switzerland) recalled that Switzerland was not party to the Lisbon Agreement. Switzerland was interested in joining the system as soon as the mandate of its revision was satisfactorily fulfilled. Accordingly, his delegation had participated actively, as an observer State, in the meetings of the Working Group during which it had noted, with satisfaction, that the positions and proposals of observer States had been taken into account by Member States in a transparent and inclusive spirit. Member States had shown their openness to consider seriously the constraints and wishes of States likely to join the system in a bid to make it more attractive for a larger number of countries. His delegation recognized the legitimacy of the current contracting parties to the Lisbon Agreement to adopt the revised Act of the agreement. Consequently, his delegation, as an observer State, supported the adoption of the draft rules of procedure, as submitted by the Preparatory Committee. Appellations of origin, explicitly covered by the current Lisbon Agreement, constitute a specific category of geographical indications. Consequently, geographical indications were, *in fact*, covered by the Lisbon Agreement. He felt that by formally introducing geographical indications into the Lisbon Agreement, the revision of the agreement through adoption of a new Act seeks to recognize the very pleasing development of indications through the world. According to his delegation, this was not a new issue on which the conference should negotiate a new agreement. Rather, it was an update of the existing agreement. He recalled that in-depth discussions had taken place at meetings of the Working Group attended by observer States in order to determine if the goal was to revise the existing agreement or, more broadly, to prepare a new agreement. It noted that several times during the process, the Working Group had spoken in favor of revising the current agreement with no Member State or observer State challenging that position. He added that every international agreement provided for different terms governing revision. The cited diplomatic conference examples supported the adoption of the rules of procedure of this conference, as proposed by the Preparatory Committee, so long as these conferences were organized according to the applicable provisions of the treaties to be reviewed, pertaining to the participation of contracting parties and observer States. His delegation was pleased to join the substantive discussions in the same spirit of transparency in order to modernize the Lisbon system which may be joined by many new members.

17. Mr. SCHENKEL (Brazil) stated that this was only the first topic of discussion in a long agenda, but its importance could not be overstated. Above all, the choice of the Rules of Procedure that would guide the work was essential for the success of the main objective set for the proposed revision, which was, according to its proponents, to make the Lisbon Agreement more attractive to non-members. However, this discussion was also important for systemic reasons. The decision whether all WIPO members would or would not be allowed to fully participate in the negotiations would determine the nature of the process. He indicated that CAMEROON had voiced its preference for an inclusive process on many occasions and wished to reiterate it. For the last quarter of a century, all diplomatic conferences in WIPO had followed this principle. His Delegation believed that this positive cycle should not be broken at the present Diplomatic Conference. Discussions that were undertaken in a plurilateral format might seem to fit the interest of small groups in the short term, but the decisions taken in such fora did not, at the end of the day, have the capacity of generating the benefits of open processes. Therefore, the principle of inclusiveness should apply to this Diplomatic Conference. Moreover, all Delegations were bound by the Recommendations of the Development Agenda and Recommendation 15 explicitly stated that norm-setting activities should, *inter alia*, be inclusive and member-driven. This made all the more clear that, in a WIPO diplomatic conference, all WIPO members should participate on an equal footing. For all these compelling arguments, the Delegation of Brazil urged the Lisbon Union members to consider the long term benefits of an inclusive diplomatic conference and amend the Draft Rules of Procedure accordingly.

18. Mr. FITSCHEN (Germany) said that the Delegation of Germany would be happy to work under the Rules of Procedure as proposed by the Preparatory Committee and that it did not see a strict need for amending them. He recalled that, like Switzerland, Germany was not a member of the Lisbon Union. However, Germany would be interested in joining the Lisbon Union once the Lisbon Agreement would have been revised, as proposed. On the issue of whether the Lisbon Union members should or should not have invited the wider WIPO membership to participate fully in the present Diplomatic Conference, he pointed out that the Delegations of Canada and Australia had rightly pointed out that it was up to the members of any Union to decide who to invite to a conference the purpose of which would be to replace the treaty establishing their Union by a new treaty or to make changes and amendments to the existing treaty. It was also true, as the Delegation of the United States of America had pointed out at length, that the Singapore Treaty and the Geneva Act of the Hague Agreement had been adopted at a Diplomatic Conference to which all WIPO members had been invited to participate on an equal footing. Nonetheless, there was no strict legal rule for the unions to do either this or that. This was a reality that had also been acknowledged by many speakers in the room. He went on to say that he fully understood the approach taken by the Lisbon Union members in the Preparatory Committee for the Diplomatic Conference, namely that the purpose of the present Diplomatic Conference would be to revise the current Lisbon System and not to invent a new one. In that regard, he pointed out that the Lisbon Union had a very small membership compared to the full membership of WIPO and that, if all WIPO members would have voting rights, they would have a guaranteed majority to adopt just any change to the proposed New Act. In that sense, the Delegation of Germany fully understood the approach taken by the Lisbon Union members. Lastly, he said that the Delegation of Germany was confident that the Diplomatic Conference would be able to carry out its business under the proposed Draft Rules of Procedure, all the more since every country would have ample opportunity and speaking-time to make its views and positions heard.

19. Mr. GURRY (Director General of WIPO) recalled that the Delegation of Argentina, speaking on behalf of a number of Delegations, had made a request for an opinion from the Legal Counsel and therefore asked confirmation from the Delegation of Argentina as to whether it wanted to receive such clarification at the present time and whether the question raised was whether international law required the Member States of the Lisbon Union to have Rules of Procedure in the form in which Lisbon Union members only may vote on decisions or whether they could choose to include other Delegations.

20. Mr. D'ALOTTO (Argentina) said that the Delegation of Argentina wished to receive a response at the present point in time and clarified that it sought clarification from the Legal Counsel as to whether the Lisbon Union members were required by either the Lisbon Agreement or the Vienna Convention on the Law of Treaties to hold a closed diplomatic conference or also had the option to choose a path of equal participation by all WIPO members.

21. Mr. KWAKWA (WIPO) said that Articles 39 and 40 of the Vienna Convention on the Law of Treaties stated that a treaty could be amended by agreement between the parties and that each of those parties had a right to take part in the negotiation and conclusion, or indeed in any decision taken in respect of that treaty and that Article 13 of the Lisbon Agreement stated that the Agreement may be revised by conferences held between the Delegates of the countries of the Special Union, namely the 28 members of the Lisbon Union. He confirmed that international law did not impose any express obligation on the Lisbon members one way or the other, leaving it to them to decide what format to use in terms of determining participation rights in the present Diplomatic Conference.

22. Mr. GURRY (Director General of WIPO) referred to Rule 34(1) of the Draft Rules of Procedure, which stated that "All decisions of all bodies shall be made as far as possible by consensus". Upon hearing all Delegations that had taken the floor, he noted that there was no consensus in the room concerning the amendment that had been proposed by the Delegation of the United States of America on behalf of a number of other Observer Delegations. In consequence, he turned to Rule 34(2), which stated that "If it is not possible to attain consensus, the following decisions shall require a majority of two-thirds of the Member Delegations present and voting". Hence, in the absence of consensus, a vote by the Member Delegations was required. As far as the voting was concerned, he referred to Rule 35(2) of the Draft Rules of Procedure, which stated that "Voting on any question shall be by a show of hands unless a Member Delegation, seconded by at least one other Member Delegation, requests a roll-call, in which case it shall be by roll-call". Since no specific request had been made, he requested Member Delegations to indicate by a show of hands whether they accepted the amendment to the Draft Rules of Procedure that had been proposed by the Delegation of the United States of America on behalf of a number of Delegations. Noting that only one Member Delegation expressed its support for the proposal, he concluded that the proposed amendment was not accepted.

23. Mr. MANOR (Israel) said that the Delegation of Israel, as a Lisbon Union member, wished to emphasize the importance that Israel attached to the present Diplomatic Conference, as attested to by the size of the Delegation, which comprised representatives of relevant Ministries and government agencies. The Delegation looked forward to beginning the discussion on the substantive issues concerning the Basic Proposal. However, before entering into the substance, the Delegation felt that there was still a need to discuss the procedural aspects of the present Diplomatic Conference. As a State which had unfortunately

experienced exclusion from various United Nations bodies and other international fora, Israel deeply believed in inclusiveness and in equality of participation in such fora. Furthermore, his Delegation was of the view that the currently contemplated language of the revision would have far-reaching implications extending beyond the current scope of appellations of origin. In view of the breadth of those implications, which concerned both geographical indications and appellations of origin, but also trademark rights, the Delegation considered it imperative to conduct a full and broad discussion encompassing as many WIPO Member States as possible in the present proceedings. In that regard, equal weight should be given to the positions expressed by non-voting WIPO members. Only such discussions would bring about an effective normative framework that would actually be utilized by a larger number of Member States rather than remaining limited to the current Member States of the Lisbon Agreement. Moreover, for the past 25 years, WIPO diplomatic conferences had always been open to all WIPO members. Holding a closed diplomatic conference on this occasion would be a reversal of accepted traditional practices in the Organization and could seriously affect the future of its governance. Therefore, he reiterated his Delegation's wish to have a diplomatic conference that would be open and inclusive to all WIPO members, including as regards voting rights. The Delegation of Israel supported the proposed amendment of the Draft Rules of Procedure, as submitted by non-Lisbon WIPO members, and was opposed to the adoption of the Draft Rules of Procedure as proposed by the Preparatory Committee.

24. Mr. GURRY (Director General of WIPO) said that, in the absence of consensus regarding the adoption of the Draft Rules of Procedure, adoption of the Draft Rules of Procedure had to be voted on, in accordance with Rule 34(2) of the Draft Rules of Procedure. He noted that 26 Member Delegations were in favor of the adoption of the Draft Rules of Procedure as contained in document LI/DC/2 Prov. He also noted that one Member Delegation had expressed itself against such adoption and that another Member Delegation abstained from the vote. He therefore declared the Draft Rules of Procedure as set out in document LI/DC/2 Prov. adopted.

25. Ms. HAMAMOTO (United States of America) expressed the deep disappointment of the Delegation of the United States of America in view of the fact that, even after hearing such strong statements from so many concerned WIPO members who had requested an open diplomatic conference, the Lisbon members had nonetheless proceeded to choose a path of non-inclusiveness, thus effectively marginalizing 160 WIPO members.

Election of the President of the Conference

26. Mr. GURRY (Director General of WIPO) asked for proposals in respect of item 3 of the draft Agenda, regarding the election of the President of the Conference.

27. Mr. SCHMIDLIN (Italy) proposed as President of the Conference the Ambassador of Peru, Mr. Luis Enrique Chávez Basagoitia.

28. As there were no other requests for the floor, Mr. GURRY (Director General of WIPO) noted that the proposal from the Delegation of Italy met overwhelming support. As a result, he announced that Ambassador Luis Enrique Chávez Basagoitia had been elected as Chair of the Diplomatic Conference.

29. The PRESIDENT thanked Member Countries of the Lisbon Agreement for their trust and generosity in appointing him to lead the discussions of the Diplomatic Conference. The Diplomatic Conference had the huge responsibility of finding common ground that would allow the inclusion of some amendments into the Lisbon Agreement to update its scope and above all to make the Lisbon system attractive enough to bring in new members. He called on delegates to make an effort to understand that procedural matters were over and they now had to focus on the subject matter of the conference, namely: how to reach an agreement that would transform the Lisbon Agreement into the most attractive Treaty possible and encourage many countries that still have not done so to consider joining it. He assured the delegates that under his chairmanship they would have the broadest discussion possible and that all proposals would be heard, clarifying that he understood consensus to mean the consensus of all participants in the discussions. He believed that participants had a collective and important responsibility and as President, he was aware that in many respects the various positions remained distant. However, under no circumstances would any position be interpreted as consensual if it did not meet with the acceptance, or at least the non-formal opposition of any of the participants in the negotiation, regardless of whether they are members or observers of the Agreement. He also urged the participants to work in the same spirit of inclusion that he would strive to maintain in the days ahead. After stating the above, the President moved to the next item on the agenda, namely adoption of the Agenda.

Consideration and Adoption of the Agenda

30. The PRESIDENT opened the discussion on item 4 of the draft Agenda, regarding the consideration and adoption of the Agenda.

31. The Agenda of the Diplomatic Conference was adopted as proposed in document LI/DC/1 Prov. 2.

Election of the Vice-Presidents of the Conference

Election of the Members of the Credentials Committee

Election of the Members of the Drafting Committee

Election of the Officers of the Credentials Committee, the Main Committees and the Drafting Committee

32. The PRESIDENT turned to items 5 to 8 of the Agenda concerning the election of the Officers of the Diplomatic Conference.

33. Mr. KWAKWA (WIPO) said that informal consultations were still being undertaken in respect of the Officers to be elected under Agenda Items 5 to 8. Therefore, he proposed to continue with Agenda Items 9 and 10 and to revert to Agenda Items 5 to 8 at a later point in time.

34. The PRESIDENT took note of the information provided by the Legal Counsel and indicated that he would accordingly postpone the decision on Agenda items relating to the election of the officers. He pointed out that this issue will be considered later.

Admission of Observers

35. The PRESIDENT moved on to the next agenda item relating to the admission of observers. He stated that there was a proposal in Document LI/DC/8 prepared by the Secretariat, and that it related to an application for admission as observer from the Indigenous Peoples' Center for Documentation, Research and Information (DOCIP), submitted to the Conference for consideration.

36. In the absence of any objection to the admission of DOCIP, he concluded that the Center was permitted to attend the Diplomatic Conference as an observer.

Opening Declarations by Delegations and by Representatives of Observers

37. Practically all Delegations and representatives of Observers which took the floor expressed their congratulations to Mr. Louis Enrique Chávez Basagoitia on his unanimous election as President of the Conference. In addition, they congratulated the Director General and the International Bureau for the preparation of the documents and services.

38. Mr. Jorge LOMONACO (Mexico) stated that Mexico welcomed the adoption of the Rules of Procedure of the Diplomatic Conference pertaining to respect of the international rights and obligations of members of the Lisbon Union pursuant to article 13 of the current Lisbon Agreement and articles 39 and 40 of the Vienna Convention on the Law of Treaties. Furthermore, he indicated that the Delegation of Mexico wished to recall the positive and constructive spirit that had characterized the work of the delegates from the very beginning of the Lisbon Agreement revision process and that the delegation had made a commitment to participate in this Diplomatic Conference in the same spirit with which it participated in each of the meetings of the Working Group on the Revision of the Lisbon Agreement and the Preparatory Committee of the Diplomatic Conference. Lastly, he trusted that the positive participation of all delegations at the Diplomatic Conference would lead them to successfully conclude a new Act of the Lisbon Agreement.

39. Mr. KLING (Israel) recalled that Israel was a member of the Lisbon Agreement following its signature in 1958, ratification in 1963 and enforcement in 1966. Accordingly, a law for the protection of appellations of origin and geographical indications had been put into place in 1965. Since then, Israel had accepted for registration 838 appellations of origin, whereas 67 applications, lately filed, were still pending. He reminded that Israel had applied for one appellation of origin, in 1969, namely "JAFFA" for Jaffa oranges, late oranges, Marsh seedless grapefruits and sour lemons. Israel had registered the majority of appellations of origin applied for and transmitted to it by the International Bureau with no reservations, thus enacting the mode of equal treatment to which all the members of the Paris Union were committed. He underlined that his Delegation looked forward to maintaining this principle in the Diplomatic Conference.

40. Referring to the pending issues concerning the Basic Proposal, he said that the position of the Delegation of Israel was that the arrangements to be agreed upon should correspond to the mechanisms already enacted and in place in the field of trademarks under the Madrid Protocol. In this regard, he referred, in particular, to the provisions in respect of intergovernmental organizations. As regards substantive provisions, he underlined that, where an element was generic in the country of origin, nothing justified its protection in other countries. It was, therefore, important that, in case an appellation of origin contained an

element that was considered generic in the country of origin, the international application specify the generic character of such element. Other elements that were not entitled to protection should also be clearly indicated in the application. On the other hand, if an appellation of origin was protected in the country of origin, it should be protected against becoming generic, at least as long as the national requirements regarding use, maintenance and renewal fees were met in the Contracting Party. On the issue of trans-border geographical indications, his Delegation proposed an amendment of Article 2(2) along the lines described in Explanatory Note 5.04, so as to make it absolutely clear in the text of the New Act that applications for a geographical indication or an appellation of origin in respect goods from a trans-border area could be filed by the Contracting Parties jointly, for the whole geographical area, or, in case they could not agree on filing jointly, individually, for that part of the area situated in their own territory. With regard to the entitlement to file an application under Article 5(2), he signaled that there was a difficulty in terms of ascertaining the right of the applicant to file an application as well as the legal entity having legal standing to assert the rights of the beneficiaries. In this regard, he invited Delegations to consider that each Contracting Party could require supporting evidence to substantiate such legal standing. Finally, he said that his Delegation was of the view that the Lisbon System should be self-sustaining. Therefore, his Delegation supported the introduction of maintenance fees under the Lisbon System. Just like in other international intellectual property filing systems, the proprietors and applicants should be the contributors and not the members of the Lisbon Union.

41. Ms. POLO (Togo) said that it is an honor for Togo to attend the diplomatic conference. She recalled that the discussions on the revision of the Lisbon Agreement on appellations of origin began almost seven years ago. Her delegation welcomed the holding of this important conference. She pointed out that Togo, as a member of the Lisbon Union, was fully aware of the challenges of this diplomatic conference and hoped that the discussions would lead to a revision of this international instrument whose extension to geographical indications would attract new members and thus strengthen and sustain the system. This was in the interest of thousands of local producers in developing countries.

42. She indicated that her delegation took note of the pending issues transmitted by the Preparatory Committee to the diplomatic conference. Her delegation hoped that the discussions would help to resolve these issues by considering the interests of all in a spirit of conciliation and openness. Regarding the substance of the draft Treaty, the Delegation of Togo, as a developing country, wished to point out, first of all that it attached importance to the issue of fees. They must not be heavy on applicants. While hoping that results will be achieved, she wished that the proceedings of the diplomatic conference would be crowned with success.

43. Mr. OKIO (Congo), speaking on behalf of the Minister of State, Minister of Industrial Development, Mr. Isidore Mvouba, who could not attend the meeting for scheduling reasons, and on behalf of the Delegation of the Congo, recalled that the Lisbon Agreement, which was 57 years old, had been signed as a response to the need to establish an international system that facilitated the protection of a specific category of geographical indications called appellations of origin in countries other than the country of origin through of their registration with the International Bureau of WIPO which kept the register of appellations of origin. To date, this Agreement had had only a small number of States due to the limitation of its scope to appellations of origin and because it did not provide for membership for intergovernmental organizations. He stated that an in-depth discussion would be held on these two points during

the proceedings and hoped that the outcomes of the conference which would be achieved through an inclusive approach would strengthen and give a new dynamic to this legal instrument. Revision of this instrument entailed taking geographical indications into account and no longer considering only appellations of origin and enabling intergovernmental organizations having registration offices, such as the African Intellectual Property Organization (OAPI), to join. He specified that the intellectual property system of OAPI, to which Congo is party and which arose from the Bangui Agreement, was based on a common office, centralized procedures, issued documents that are valid in each of the Member States and a system consistent with international conventions. His delegation considered that the admission of such organizations into the revised Lisbon system would yield several benefits to countries like Congo. Although it had been party to the Lisbon Agreement since November 16, 1977, Congo could not notify a refusal of international registration for an appellation of origin referring to the country because only OAPI, which plays the role of intellectual property office for each of the Member States and holds the registers of geographical indications and appellations of origin could do so. Accordingly, the new Act of the Lisbon Agreement would make a substantial improvement and modernize the current legal framework by facilitating the accession of intergovernmental organizations like OAPI. He pointed out that the challenges of globalization implied a need to protect geographical indications or appellations of origin against all forms of misappropriation because products covered by geographical indication or appellation of origin represented a significant share of exports from OAPI Member States. Congo could therefore take advantage of the new Lisbon Agreement to protect and lend additional value to its handicraft and agricultural products whose reputation is based on their geographical indication. According to his delegation, the new Agreement would also enhance the value of local products and contribute to the improvement of living conditions for rural communities, create jobs and stem rural exodus. He stated that with regard to all these advantages, he had been requested by his Government to seek the necessary consensus with each participant that would lead to the adoption of the new Lisbon Agreement, essentially to encourage and enhance traditional national products, improve the quality of a number of products, promote and defend collective interests, strengthen partnerships in the production, promotion and marketing of products with higher value-added, and boost the marketing of products stamped with a geographical indication. He concluded with the wish that the conference deliberations be crowned with success.

44. Ms. WHYTE GOMEZ (Republic of Costa Rica) stressed the fact that recognition and protection of geographical indications and appellations of origin were important to the Republic of Costa Rica as instruments of social and economic development which enabled some of the poorest segments of the population to improve their living conditions. Consequently, Costa Rican authorities had, in recent years, coordinated efforts to develop, promote and strengthen an efficient system for the protection and recognition of geographical indications and appellations of origin. She added that the Republic of Costa Rica had always fully honored its international commitments and had adjusted its national legislation to ensure full consistency with the requirements of the Lisbon Agreement and the Agreement on Trade-Related Aspects of Intellectual Property Rights. Hence, the international system for the protection of appellations of origin, which henceforth included geographical indications, was a sensitive issue of major importance for his Delegation because it provided producers with better tools for effectively differentiating themselves in foreign markets and facilitated their inclusion without any need for heavy expenditure to get protection. This boosted their competitiveness. Accordingly, she clarified that while the Delegation of the Republic of Costa Rica recognized the need for the Lisbon System to be self-sufficient from the economic standpoint, it was also advocating that any revision and adjustments on the said theme should

not, in any way, lead to the adoption of measures or agreements that transform it into an exclusive or inaccessible mechanism. She also extended thanks to WIPO and to all the delegations that had participated actively in the 10 meetings held from March 2009 by the Working Group on the Development of the Lisbon System and which had yielded results, such that today there was a text based on a high degree of consensus and which served as the basis for the holding of the current diplomatic conference. She recalled that from the beginning, the Delegation of the Republic of Costa Rica had participated actively in the process of revising and improving the Lisbon System to enhance its attractiveness and ensure its growth, to open new doors and opportunities for local producers. Accordingly, she assured the delegates that the Republic of Costa Rica was attending the Diplomatic Conference with the intention of collaborating in the drafting of a final text that will make it possible to improve the current system. She cordially invited all countries represented by their distinguished delegations to maintain constructive dialogue on outstanding issues that still needed to be addressed during the Diplomatic Conference but without failing to comply with the principles contained in the Lisbon Agreement and ensuring that the new Act was adjusted and compatible with the commitments made by participating countries under the Agreement on Trade-Related Aspects of Intellectual Property Rights. Lastly, cognizant of the supreme importance of intellectual property and of the protection and international recognition of geographical indications and appellations of origin in the present case, she wished the President of the Conference full success in the conduct of the discussions, which would undoubtedly benefit all the countries represented.

45. Ms. TRINDADE (Portugal) said that her Delegation was of the view that the Basic Proposal recommended by the Working Group to this Diplomatic Conference provided an excellent basis for discussions. Her country had a long-standing tradition in terms of protecting appellations of origin and geographical indications and her Delegation was convinced that the conclusion and/or revision of international legal instruments in this field would allow producers to better reap the benefits linked to the high quality and prestige of many of their products. The importance of appellations of origin and geographical indications went well beyond their commercial value. They constituted also important instruments for the promotion of important social economic goals, such as rural development, tourism, environmental sustainability, consumer protection and the safeguarding of historical and cultural heritage. It was therefore with great satisfaction that her Delegation had witnessed the progress in the negotiations which were now almost finalized. She expressed the hope that these negotiations would continue in the same constructive and responsible spirit and ensured her Delegation's respect for all proposals that would be made, whether coming from Member Delegations or from Observer Delegations, if they contributed to achieving the two underlying objectives of the revision process – making the Lisbon System more attractive for users and prospective new members while, at the same time, preserving the principles and objectives of the current Lisbon Agreement, in particular the *sui generis* level of protection for appellations of origin and, in the future, geographical indications. Her Delegation was also committed to ensuring that, where possible and in line with the objectives set out for the revision process, the Lisbon Agreement would include a fair degree of flexibility to accommodate the countries that did not have a *sui generis* protection system for appellations of origin or geographical indications. It was in this spirit that her Delegation intended to participate in the work. The only way to overcome divergences and conclude a revised Lisbon Agreement would be by introducing improvements to the current Lisbon System while, at the same time, making it more flexible and adjusted to the needs of users.

46. Mr. KRATOCHVÍL (Czech Republic) recalled that the protection of appellations of origin and geographical indications had a long tradition in the Czech Republic. While his country had always considered the Lisbon Agreement to be a highly effective and well-functioning instrument of international cooperation, his Delegation recognized the need to modernize and adapt the Lisbon Agreement, while maintaining its principles and objectives. His Delegation fully subscribed to the objectives that had determined the convening of the Diplomatic Conference and supported amendment of the Lisbon Agreement in order to attract new countries and intergovernmental organizations. The Basic Proposal was an excellent basis for a successful outcome of the negotiations at the Diplomatic Conference.

47. Mr. SCHMIDLIN (Italy) said that this Diplomatic Conference marked the final stage of the revision process that had started in 2009 and had been open since its inception to all WIPO members. It had been a long journey, during which many members and observers of the Lisbon Union had actively engaged in finding solutions to improve and update the legal framework regulating the Lisbon System, to clarify its scope with a view to adapting it to the evolving international legislation on intellectual property and to increasing its membership, while preserving the objectives and principles of the 1958 Lisbon Agreement. The revision of the Lisbon Agreement had been an inclusive and transparent process, during which the constructive contribution of the observers had been welcomed by the members of the Lisbon Union, in a firm belief that inclusiveness of the process would encourage the contemplated enlargement of the Lisbon community. For its part, his Delegation would continue to have an open approach and was of the view that the New Act of the Lisbon Agreement should be fit for the needs and aspirations of prospective members of the Lisbon Union. The whole exercise was intended to empower and not to damage any State. The availability of a WIPO international registration and protection system for geographical indications and appellations of origin could foster public and private investments in relevant sectors with positive effects for the economy of the country involved in terms of sustainable development, increased competitiveness, export diversification and job creation, while preserving the production concerned within the country. Geographical indications and appellations of origin offered an opportunity to explore a unique feature of the producer territory, such as traditional knowledge or biodiversity, and to transform this feature into marketable products. His Delegation stood for a prosperous and effective Lisbon System, capable of facilitating WIPO members in the full use of geographical indications and appellations of origin as a means for the social economic development, and capable of meeting the aspirations of producers from all over the world and of any dimension – be they small farmers or SMEs – to reach new markets for their products and to receive the solid protection for their geographical indications and appellations of origin without undue burden and at a contained cost. His Delegation was of the view that the revision of the Lisbon Agreement would not impact on the co-existence of the two main existing approaches for the protection of appellations of origin and geographical indications. On the contrary, it would preserve such diversity by providing a global intellectual property system open to WIPO members protecting geographical indications as a separate intellectual property right and accessible to producers using such a *sui generis* title of protection. The Diplomatic Conference was called to build upon the progress already achieved and to resolve the outstanding issues in the same spirit of dialogue that had so far inspired the revision process. To that end, a further step needed to be made. Merely restating preferred solutions without attempting to come closer to the one desired by others would not be enough. Moving forward would require good faith, mutual trust and understanding of each other's position and willingness to bridge gaps. His Delegation would do its part.

48. Mr. PRICA (Bosnia and Herzegovina) recalled that Bosnia and Herzegovina had become a Member State of the Lisbon Agreement in July 2013. Since July 2008, an interim Stabilization Association Agreement had applied in Bosnia and Herzegovina, which had been fully adopted by the European Union the month before and would become effective on June 1, 2015. The Agreement with the European Union stipulated the approximation of the existing legislation of Bosnia and Herzegovina with the legislation of the European Union. In that context, Bosnia and Herzegovina had taken all necessary measures to guarantee that the protection of industrial and commercial property in Bosnia and Herzegovina would be similar to the protection of these rights in the European Union and its member states, including effective procedures for the implementation of such measures. Taking into account the recently renewed strong readiness of the European Union to integrate Bosnia and Herzegovina, to the greatest extent possible, into political and economic processes in Europe as well as the prospects to provide the status to Bosnia and Herzegovina of potential candidate for European Union membership, Bosnia and Herzegovina had endeavored to approximate its legislation in relevant sectors with the European Union legislation in the field of intellectual property. Efforts had been made to harmonize the level of implementation of these rights with the standards of the European Union *acquis communautaire*, so as to bring them in conformity with the requirements set out in the Agreement with the European Union. In 2010, a comprehensive reform of the legislation in the field of intellectual property had been carried out and resulted in the adoption of the relevant regulations. The legislation of Bosnia and Herzegovina provided protection in respect of both geographical indications and appellations of origin, based on the rules and principles of the European Union *acquis communautaire* and the Lisbon Agreement. In the last year, an analysis had been made of the fulfillment of obligations under said instruments relating to the national portfolio of industrial property and, more precisely, to the geographical indications and appellations of origin for agricultural, fishery and food products, wine, alcoholic beverages, aromatized wines and traditional products. The result of this analysis showed that the legislation of Bosnia and Herzegovina was in conformity with said instruments. Bearing in mind the current economic situation in Bosnia and Herzegovina caused by the war in the 90's and further prolonged by strong and harsh financial and economic crisis in the last decade, Bosnia and Herzegovina intended to open to small producers and farmers in local areas and communities any possible means to stabilize their production, to increase competitiveness and to reach new markets for their products without any burden and at market acceptable terms. This diversity of protection could be a further impetus to attract foreign investments in certain areas contributing to the sustainability of these areas of the country as a whole. This process required a lot of efforts and continued work. A plan had already been drafted. It would be finalized and its implementation would start as soon as possible after the end of the Diplomatic Conference so as to achieve the stated goals. Taking in to consideration that the New Act of the Lisbon Agreement also introduced rights in respect of geographical indications within the Lisbon System, he expressed the support of his Delegation for these final efforts in making the Lisbon System more attractive to the right holders of geographical indications and appellations of origin and to the current and potential members of the Lisbon Union.

49. Ms. HORVÁTH (Hungary) said that the convening of this Diplomatic Conference was the result of a long and thorough process which had been conducted in the Working Group established for that purpose. She expressed her pride in the fact that her Delegation had actively contributed to the activities of the Working Group and underlined that this contribution corresponded to the paramount importance that Hungary attached to the protection of geographical indications in general and to the revision of the Lisbon System in

particular. She noted with satisfaction that, while legally speaking the revision process was taking place among the Contracting Countries of the Lisbon Agreement, the latter had so far been able to ensure strong and ever intensifying involvement of other Delegations, including WIPO Member States currently outside the Lisbon System as well as intergovernmental and non-governmental organizations. Her Delegation was fully convinced that, during this Conference, the Lisbon Union members should follow the same inclusive approach and engage in substantive discussions within the widest circle possible. She underlined the importance of this approach, as the revision of the Lisbon Agreement was indeed of interest not only to its current membership but also to other WIPO Member States, whether developing or developed countries. In that regard, her Delegation wished to highlight the main objectives of the revision of the Lisbon Agreement, namely: 1) the establishment of a global registration system covering all possible categories of geographical indications representing a long overdue complement to WIPO's global intellectual property systems; 2) enabling the European Union and other competent intergovernmental organizations to join the Lisbon System as full members; and 3) the refinement and modernization of its legal framework, so as to make the Lisbon System more user-friendly and to allow its membership to increase significantly and reach a truly global coverage. When pursuing these goals, the Diplomatic Conference should also seek to preserve the principles and values of the current Lisbon Agreement, such as the flexibility already inherent in the Lisbon System as to the type of national legislation under which the protection of appellations of origin and geographical indications was ensured in Contracting Parties. This should be maintained while embracing *sui generis* protection regimes in the revised Lisbon System. Throughout the discussions, the Diplomatic Conference should try to always keep in mind the interests of those whom the entire revision should ultimately serve, so as to live up to the expectations of producers relying on geographical indication regimes in their continued attempts to increase their competitiveness, to diversify their exports and to create new jobs or save existing ones. The Diplomatic Conference should also ensure that geographical indication functions were reliable guarantees to consumers as to the quality and production methods of products. Geographical indications were by definition deeply rooted in local cultures. Therefore, when one dealt with a global framework for their protection, one inevitably tried to connect local with global. At this Diplomatic Conference, participants had to make every effort to achieve, by appropriate legal techniques and efficient international cooperation, that local values could enrich the global community and local producers could benefit from their globally valued products. Her Delegation was confident that, if the Diplomatic Conference did not lose sight of the fundamental objectives of the reform and the vital economic and social interests at stake, Delegations would be able to jointly ensure a successful outcome of the Diplomatic Conference and agree on a New Act of the Lisbon Agreement acceptable and beneficial to all.

50. Mr. NIEMTCHINOW (France) declared that it was an honor and a pleasure for him to address participants at the opening of the diplomatic conference of the Lisbon Union, which was the culmination of seven years of work in which his delegation had been fully invested. He wished to limit his observations to three main messages. His first message was to underscore the point that, regardless of what others might say, the recognition and protection of geographical indications would be a major step forward for the international community as a whole. For producers, especially in entire professional sectors, geographical indications created value and provided market access with a higher remuneration than that of the same product which bears no geographical indication. He stated that the relevance of production sectors went far beyond increased incomes, especially and above all, in developing countries. Such sectors were a great lever for promoting local development, combating rural exodus and preventing the erosion of traditional knowledge. Today, the globalization of trade directly

benefitted products of geographical indication that are increasingly exported. However, such commercial development was also accompanied by an escalation of usurpation. For this reason, it is vital for whole segments of the global economy to combat these abuses, and revision of the Lisbon Agreement would efficiently address the issue. He declared that consumers worldwide were increasingly disoriented by repeated health crises and concerns about the geographic origin and composition of what they drink or eat. Geographical indications reassured them on the quality and origin of products. Finally, he sought to reassure those who expressed concerns about trademarks. They would continue to exist because the revised Act will be complementary to other forms of intellectual property. There was therefore no reason to pit the two systems against each other or to accept that one had hegemony over the other. The new Act was an open instrument with the possibility for States parties to choose their means of protection, which may be a *sui generis* right or another mechanism such as collective marks.

51. He then moved on to his second message which focused on the future developments of the revised Lisbon Agreement and recalled that the objective of this review was to make the Agreement attractive for new members, while maintaining its current principles and objectives. Logically therefore, it had been considered that its protection be extended to geographical indications to provide them with significant and harmonized protection through a simple and rapid international procedure at reasonable cost. He welcomed the already positive signals from several observer States on their willingness to join the future revised agreement and the possibility for intergovernmental organizations, such as the European Union or OAPI to accede to this revised agreement.

52. He concluded with his third message about the priorities of his delegation in the negotiations. These related first of all to improvement of the protection of geographical indications against usurpation and misuse.- Balancing the protection of appellations of origin and geographical indications and with that of the earlier marks and earlier rights was the second priority for France. The third priority was to strictly determine the grounds for invalidation of the protection previously afforded by States parties. The fourth priority of his delegation was to allow full membership for intergovernmental organizations under the revised Act.

53. The PRESIDENT adjourned the session.

Second Meeting Monday, May 11, 2015 Afternoon

Opening Declarations (continuation)

54. Ms. RODRIGUEZ CAMERO (Cuba) declared that her delegation would participate actively and constructively in the discussions that would take place on pending issues.

55. Ms. MUJIRI (Georgia) expressed her Delegation's gratitude to the Working Group on the Development of the Lisbon System for its constructive work over the years, which had resulted in significant progress. Her country attached great importance to the protection of appellations of origin as an efficient tool for promoting and raising the potential of Georgian wines and other products. In this context, her Delegation supported the adoption of a single instrument for the protection of geographical indications and appellations of origin that would allow the Lisbon System to gain wider membership and become more attractive for users and prospective new members. Finally, she expressed her Delegation's hope for fruitful deliberations that would lead to a successful outcome of the Diplomatic Conference and adoption of the New Act of the Lisbon Agreement.

56. Mr. ESFAHANI NEJAD (Iran (Islamic Republic of)) said that the Lisbon Agreement had been concluded to respond to the needs for an international system that would facilitate the protection of a special category of geographical indications, namely appellations of origin, in countries other than the country of origin, by means of their registration with the International Bureau of WIPO. In response to the growing demand, a process for revision of the Agreement had been initiated, not only to make the Lisbon Agreement more attractive and inclusive, but also to turn it into a more robust instrument for preventing the misuse and misappropriation of geographical indications and appellations of origin. His Delegation attached great importance to the revision process of the Lisbon Agreement, due to its structural and economic advantages for rural areas and overall development in countries. From a structural point of view, the broadening of the scope of the Agreement to geographical indications would make the Lisbon System more responsive. Moreover, the revised Lisbon System would offer to producers from both developed and developing countries a reliable tool to protect their products linked to geographical origin. The revised Lisbon System would also provide an opportunity to protect their culture, traditions and heritage. Furthermore, in coming up with a consolidated and unified framework for the protection of geographical indications and appellations of origin, the Lisbon System would be even more flexible, simplified and user-friendly, which would be a valuable achievement that would certainly allow the Lisbon System to attract a wider membership. Hence, the inclusion of geographical indications in the Lisbon international registration and protection system, with the same normative regime as for appellations of origin, would allow producers throughout the world to obtain protection in countries other than the country of origin at an affordable cost.

57. With regard to economic and development aspects, he underlined that the majority of developing countries, including Iran (Islamic Republic of), were rich in biodiversity and plant varieties because of their diverse ecosystems. Their different agro-climatic zones and agro-biodiversity systems enabled them to grow agricultural products that derived their distinctive qualities and reputation from the geographical area as well as human factors and the climatic conditions associated with that region. To that end, the protection of geographical indications would play a vital role for the economy of these countries. It could also provide a meaningful tool for the benefit of farmers living in rural areas to protect their products in the global market and, consequently, assist countries in consolidating their development strategies towards sustainable development.

58. He recalled that his country had acceded to the Lisbon Agreement in December 2005. The National Act for the Protection of Geographical Indications had been enacted by Parliament in 2005 and had put in place a modern legislation for the protection of geographical indications in Iran (Islamic Republic of), thus providing a suitable ground for obtaining protection in Lisbon member countries. In this context, the Iranian competent

authorities had exerted many awareness raising activities, informing and educating the target audiences and beneficiaries about the role and advantages of the Lisbon System and encouraging stakeholders to file applications under this system. Since 2013, 16 products had been registered and obtained protection under the Lisbon Agreement. His Delegation was of the view that the success of the Lisbon revision process would be WIPO's success in realizing and implementing its main objective, i.e., the promotion of intellectual property rights, as well as the crystallization of development objectives into the normative framework of intellectual property. His Delegation was committed to engaging constructively in the forthcoming discussions and looked forward to the adoption of the New Act.

59. Mr. KLINKA (Slovakia) expressed his Delegation's appreciation for the work and efforts of the Lisbon Working Group in preparing the ground for this Diplomatic Conference, which was the most important and remarkable normative event in WIPO in the current calendar year. The Slovak Republic had been a long-standing member of the Lisbon System with several registered appellations of origin. His Delegation welcomed the revision of the Lisbon Agreement to make it more attractive for potential members, for the benefit of both local producers and consumers. Considering the Basic Proposal a very good basis for the upcoming discussion, he expressed his belief in a spirit of openness and real partnership, allowing all relevant views, opinions and proposals to be heard and considered carefully, with due respect, so that the main aim could be reached on the basis of a substantive consensus, as widely as possible.

60. Ms. MORENO (Nicaragua) said that Nicaragua had been a member of the Lisbon Agreement from June 15, 2006, and had protected many appellations of origin from various countries, in keeping with international agreements and national laws. She added that her delegation was convinced that the draft document of the new Act to be revised, addressed the needs of many productive sectors whose products had achieved much recognition nationally and internationally and which possessed distinctive qualities and features specific to the region where they are extracted or produced. The Delegation of Nicaragua recognized the efforts made by the Working Group on the Lisbon Agreement and believed that the final document to be adopted would be efficiently consensual and contain provisions that are consistent with international law principles. Nicaragua was currently implementing actions to strengthen key companies and stakeholders involved in the manufacture of the country's emblematic products, relying on the tools of intellectual property which boost competitiveness. This new agreement would facilitate not only the protection of appellations of origin but also geographical indications. Such protection was necessary given the anti-competitive economic practices that had been prevalent of late.

61. Mr. EMRULI (the former Yugoslav Republic of Macedonia) said that the adoption of the New Act of the Lisbon Agreement would provide a significant improvement and simplification of the Lisbon System. As the revision of the Lisbon Agreement would be of great importance for developing countries, his Delegation supported the enhanced system for the protection of geographical indications. As the Lisbon Agreement would bring positive economic effects in terms of profitability and prices, he expressed the hope that the forthcoming discussions would focus on how intellectual property rights could meet the needs of developing countries through geographical indications for agricultural and non-agricultural products with particular qualities, reputation or other characteristics. He also expressed the hope that the New Act would have a positive impact in terms of putting an end to the rural exodus and in terms of the preservation of jobs linked to the manufacture of traditional products and the related know-how, of catalyzing the manufacture of regional products and

stimulating tourism and growth of jobs. His Delegation would contribute constructively to the negotiating process with the aim of achieving a positive outcome, so that the New Act would become a success story in WIPO's norm-setting activity, meet expectations of interested States and attract new members to the Lisbon System.

62. Ms. KOUMBY MISSAMBO (Gabon) expressed her delegation's satisfaction with the imminent culmination of the long process towards the adoption of a new Act of the Lisbon Agreement. Gabon wished to draw the attention of all WIPO Member States to the fact that the conclusion of this process was, in spirit and form, an opportunity for a larger number of States as well as regional and intergovernmental organizations to adhere to an agreement that was fairer and broader in its application. She indicated that it was truly an opportunity to increase the contribution of intellectual property to the development of States. Her delegation was convinced that the adoption of a Lisbon Agreement extended to geographical indications would ultimately lead to the development of the villages, regions and national territory of Gabon, while promoting the know-how of its communities. For her delegation, this was a commitment to market rules that were fairer and more respectful of human value. The objectives of the revised Lisbon Agreement were perfectly consistent with the policy pursued by the President of the Republic of Gabon, His Excellency Ali Bongo Odimba, which is reflected in the *Gabon Émergent* Strategic Plan. This policy was geared towards, *inter alia*, diversification of the country's economy through processing of natural resources, with a clear option for sustainable development. Far from being a mere political gesture, this was a wise stance to address the legitimate claims of civil society and consumers' associations which were making ever-increasing demands about the quality and origin of the products they consume. She hoped that this dimension would be factored into the conference proceedings, so that the revised Lisbon Agreement would be a real development tool for States like Gabon.

63. Mr. KALUDJEROVIĆ (Montenegro) expressed the strong commitment of his country to the enhancement and modernization of the Lisbon System as a tool for the protection of geographical indications. In parallel with the accession process to the European Union, Montenegro had been continuously strengthening its legislation on intellectual property rights. Underlining that its national legislation had been fully aligned with the TRIPS Agreement, he said that geographical indications and appellations of origin were protected in his country under a *sui generis* regime, while internationally the protection could be obtained via the Lisbon System. In 2014, the Montenegro Intellectual Property Office had organized together with WIPO an international conference that had focused on the benefits of the protection of geographical indications for national products, including via the Lisbon System. The fact that several geographical indications were already registered under the Lisbon System had been an additional impetus for revising the Lisbon Agreement. Recalling that one of the goals of the revision process had been to contribute to competitiveness and preservation of traditions and local culture, his Delegation hoped that the Lisbon System would become a truly global registration system. As the revised Lisbon Agreement would refine the current legal framework by including provisions that would also apply to geographical indications besides appellations of origin, his Delegation believed that the modernized multilateral instrument would enable users to take advantage of it by transforming the unique features of their products into marketable products. Consequently, the Delegation looked forward to welcoming other WIPO members in the Lisbon System as well as intergovernmental organizations such as the European Union, OAPI and ARIPO. He expressed confidence that implementation of the revised Agreement would have a positive impact on economic growth, export, diversification and sustainable development. Emphasizing that the Diplomatic Conference should enhance the cooperation and mutual understanding between Member

States in creating and maintaining a balanced and effective international intellectual property system, he wished the Conference fruitful discussions and constructive negotiations.

64. Mr. ROSSI (Peru) stated that Peru adhered to the Lisbon Agreement of March 15, 2005 and this instrument entered into force on May 16 of the same year. The agreement was signed to address the need for an international system that facilitated the protection of a special category of geographical indications, namely "appellations of origin", in countries other than the country of origin, through registration at WIPO. Peru attached great importance to the protection of appellations of origin. Accordingly, its delegation was convinced of the importance of naming, distinguishing and protecting a product based on its special natural features and methods of production, which include traditional knowledge, thus contributing to the sustainable and inclusive development of countries of origin and the improvement of the living conditions of their peoples, and also enabling the ever-demanding consumers of various markets in the world today to have access to products of unique quality and recognized reputation gained in exclusive markets over the years, and in some cases, over the centuries. In this regard, Peru, like the rest of the members of the Lisbon Agreement, had made great efforts to promote the greater commercialization of products recognized with appellations of origin. He then mentioned some existing and recognized Peruvian appellations under the Lisbon Agreement, namely: Pisco, obtained from the distillation of wines from the valleys of Center and South Peru; Chulucanas traditional pottery; Cusco's giant white corn and Pallar de Ica; or the exceptional coffee of Villa Rica and Machu Picchu-Huadquina, among others. Fully convinced of the need to promote the appellations of origin in their country, the delegation of Peru had, from the very beginning, been involved in this revision process aimed at improving the Lisbon Agreement system. His country was doing so because this would benefit its members and make it possible to develop the most attractive system that would gradually become universal, but also because his delegation was convinced of the opportunity that an appellation of origin provides to producers and consumers globally. That was the essence of the Lisbon Agreement. Peru would do everything within its power to help ensure that the Diplomatic Conference adopted a new Act of the Lisbon Agreement, while maintaining its principles and objectives; i.e. by including provisions that do not compromise the nature of the exclusive protection granted by this international instrument to appellations of origin, and soon to geographical indications. Peru was willing to continue engaging in fully-open negotiations with the other members of the Organization and, where there was full agreement with all members of the Organization, to include provisions that effectively contribute to the strengthening of the Lisbon System.

65. Mr. SØRENSEN (European Union) said that the European Union and its member states, being very active in the field of geographical indications, welcomed the opening of the Lisbon Agreement for intergovernmental organizations and reiterated their support for the revision of the Lisbon Agreement with the objective of making the Lisbon System more attractive for users and prospective new members while preserving the principles and objectives of the current Lisbon Agreement. Underlining the importance of consistency of the draft new instrument and the draft Regulations with the TRIPS Agreement, his delegation welcomed the progress made since 2009 in the ten Working Group meetings towards refining the current legal framework of the Lisbon System and allowing accession by intergovernmental organizations. The Basic Proposal, which the Working Group had recommended for adoption by the Diplomatic Conference, would modernize the current Lisbon System, while preserving the principles and objectives of the Lisbon Agreement, in line with the mandate given to the Working Group by the Assembly of the Lisbon Union in September 2008. It reflected the different positions expressed by the Lisbon members as well

as other WIPO members that had participated in the discussions as observers. The text of the Basic Proposal was a good basis for achieving a fair and balanced outcome of the revision process. In particular, there would be adequate scope for accommodating the needs of countries which had not opted for *sui generis* protection of appellations of origin or geographical indications. The Basic Proposal gave sufficient flexibility for Lisbon System members, notably through adequate safeguards and the possibility to issue refusals of protection as under the current Lisbon Agreement, to accommodate the specific domestic legislative choices of implementing the protection of geographical indications. On this basis, he concluded that the Conference should make good use of the time available to ensure its successful outcome.

66. Mr. BATANGA (OAPI) speaking on behalf of Mr. Paulin Edou Edou, Director General of the African Intellectual Property Organization (OAPI), noted that in recent years, under the leadership of Mr. Edou Edou and through the willingness of OAPI Member States which wish to transform intellectual property into an instrument for their development, OAPI, which is an IPO with 17 Member States, had adopted a policy of participating in international conventions administered by WIPO, whenever the opportunity arose. He recalled that in 2008, OAPI acceded to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs; in 2013, OAPI became a member of the Union for the Protection of New Varieties of Plants (UPOV); and recently, in December 2014, it filed its instrument of accession to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. Lastly, if the proceedings of this conference were crowned with the desired success, OAPI could become a member of the Lisbon System. He recalled that even as this conference was holding, four Member States of OAPI were already members of the Lisbon System, namely: Burkina Faso, Congo, Gabon and Togo. OAPI and its Member States paid great attention to the developments under this Treaty and hoped that the conference would be conducive to reflection on the work accomplished and future prospects. He recalled that the new Act of the Lisbon Agreement was intended to facilitate access to the system of international registration of appellations of origin and geographical indications for certain States. OAPI and its Member States maintained a successful and exemplary cooperation with WIPO, manifest through their presence at the conference. Their presence also attested to OAPI's interest in a form of cooperation whose goals, actions and achievements were fully consistent with the profound aspirations of all States represented at the conference. The possibility that an intergovernmental organization which had a regional office for the purpose of registering marks could become a party to the new Act of the Lisbon Agreement was introduced into the Act in order to enable OAPI to join the system. For OAPI and its Member States, which are current and potential members of the Lisbon system, the new Act would be a tool extending the protection of geographical indications in several countries for an ever-growing number of producers' groups. At the same time, it was one means of attracting foreign investors. Also and above all, it would reassure the users of the system. The accession of many States to the Lisbon system was an opportunity for them to enjoy many advantages in cooperation between members, including facilitation of the protection of appellations of origin and geographical indications abroad, capacity-building, the attractiveness of their economies and trust between members.

67. Mr. SO (Democratic People's Republic of Korea) said that, thanks to the real and collaborative spirit of the Lisbon Union member States in the last six years of negotiation, the New Act of the Lisbon Agreement had reached its last stage of adoption. It would further upgrade the Lisbon System to be more attractive for States and users while preserving its principles and objectives for the protection of geographical indications. His Delegation

applauded the significant progress made by the Working Group and WIPO Secretariat for the vocational endeavors for the Lisbon System to have a refined legal framework. Appellations of origin and geographical indications were important socio-economic factors. They gave praise to local people, ensured the quality of products, stimulated economic development and generated other benefits. Like other countries in the world, the Democratic People's Republic of Korea had also valuable intellectual property in terms of appellations of origin and geographical indications that required protection. His Delegation was confident that the New Act would provide formal ground to better protect geographical indications and appellations of origin. At the same time, the Delegation looked forward to the expansion of the Lisbon family, as high interest had been demonstrated by non-Lisbon member States.

68. Mr. EL MALIKI (Morocco) said that geographical indications are distinctive signs that identify a product or service as originating from a territory or region. As a result, they represent a link between producers and consumers that is often more than commercial in character, especially in certain sectors such as agriculture, and for the local products and handicraft. Thus, where it is developed, a geographical indication seeks to rally all stakeholders around the notions of quality, territorial development and environmental protection, for example. That is why a number of countries, including the Kingdom of Morocco, have provided for a *sui generis* system for the protection of geographical indications within their national legislations. In Morocco, the national register of geographical indications and appellations of origin established by the law on industrial property in 2006 contains 17 geographical indications and three appellations of origin. A distinctive sign that is linked to a territory can also be protected by a collective mark or collective mark of certification. In Morocco, this choice had been adopted for a certain number of handicraft products thus giving them protection at the national level and the possibility of protection in nearly a hundred countries under the Madrid system which, for slightly over 25 years, had undergone changes similar to those of the new Act of the Lisbon Agreement which we hoped to conclude. The Kingdom of the Morocco was not a member of the Lisbon Agreement but during the WIPO General Assembly of 2013, its delegation had supported the decision to hold the diplomatic conference. The Delegation of Morocco felt that the conference should seize this unique opportunity to adopt a new more open and attractive Act of the Lisbon Agreement that would focus more on the scope of the protection than on procedures; that would guarantee rights previously acquired in good faith; and that would take account of the specificities of national systems for the protection of geographical indications, especially for developing countries, so long as the objective is maintained. As usual, the Delegation of Morocco would work constructively during this diplomatic conference to iron out the few substantive points of divergence remaining on the agenda. He concluded with the hope that the proceedings of the conference would be crowned with success that matched the expectations of users of the industrial property system at the national and international levels.

69. Ms. MORARU (Romania) stated that the Delegation of Romania congratulated the International Bureau for the excellent quality of the documents submitted to the diplomatic conference which reflect the proposals made by participants of the Working Group on the Development of the Lisbon System over the past five years. She recalled that as a member of WIPO, Romania had always shown great interest in proceedings on industrial property development. Accordingly, the Delegation of Romania recognized the importance of a new Act of the Lisbon Agreement intended to strengthen and update the legal framework, and ensure that producers easily get protection for geographical indications and appellations of origin in countries other than the country of origin, and at affordable cost. She expressed the

belief of her delegation that the final format of the documents submitted for adoption by the diplomatic conference would reflect a balance for all who are interested in acceding to the new Act of the Lisbon Agreement, which will be an important instrument for the development of international trade. Her delegation was pleased to note that the new Act would have a decisive effect on the harmonization of national legislations and communicated the intention of the Delegation of Romania to sign and ratify this legal instrument. As an observer delegation, Romania wished to share its hope that the proceedings of the conference would be an example of international cooperation and mutual understanding between participants and that they would be crowned with success.

70. Mr. FERREIRA (Chile) indicated that his country, in its capacity as observer, had participated actively and constructively throughout the Lisbon Agreement revision process. Its participation had included the presentation of proposed texts that had been discussed during the various sessions of the Working Group on the Development of the Lisbon System and enriched by contributions from both members and observers. As everyone new, the formulation of a rule that expressly addressed aspects related to the protection of homonymous appellations of origin and geographical indications was a matter of special importance to the Delegation of Chile. In this regard, considering the history of the implementation of the current text among the members of the Lisbon Union, it was clear to his delegation that the members had not often had sufficient legal certainty as regards compatibility between their domestic regimes and the obligations arising from the Lisbon Agreement. Indeed, that had been the case for some members of the Agreement who had given national recognition to appellations of origin and geographical indications that were homonymous with a product registered under the Lisbon Agreement. He considered that given this situation, each contracting party had to preserve its autonomy to determine whether or not to permit the coexistence of homonymous products. Moreover, members who allow the coexistence of homonymous geographical indications or appellations of origin should have the certainty that this practice is consistent with the Lisbon Agreement. With a view to achieving the above, Chile had supported the inclusion of an "agreed statement" - currently added as a footnote to article 11 - which confirms the existence of this practice. Although it shared the concerns expressed by some States that it was inappropriate to resolve this matter through a footnote, his delegation wished to remind delegates that his country had supported previous versions where the issue was addressed within the articles. He added that unfortunately, the "agreed statement" was currently in square brackets and so its future was uncertain. His Delegation was convinced that including the "agreed statement" would give legal certainty to current members and encourage expansion of the membership. Hence, he called on the various delegations which are members of the Agreement to support incorporation of the "agreed statement" into the text of the agreement.

71. Ms. BILEN KATIĆ (Serbia) welcomed the current text of the Basic Proposal and expressed the hope that the forthcoming discussions would be fruitful and constructive. Her Delegation looked forward to seeing a New Act which would enable the beneficiaries, in particular from rural areas, to better use the international registration system of geographical indications and was of the view that it could be an additional instrument in support of the rural development in Serbia. Finally, she encouraged other countries and intergovernmental organizations to join the Lisbon Union.

72. Ms. PERLMUTTER (United States of America) wished to reiterate her Delegation's strong concern with the Diplomatic Conference and the flawed process which had preceded it. Her Delegation believed that the decision taken earlier under Agenda Item 2 further

undermined the legitimacy of that process. In fact, a small subset of WIPO members had decided to strip 160 other members of their rights to vote, propose and second amendments and other critical rights of participation in norm-setting, even though they could have chosen differently. As confirmed by WIPO's Legal Counsel, they were not bound by international law to proceed this way, which was contrary to every past WIPO diplomatic conference for the past 25 years, at which all WIPO members had had full rights. Her Delegation wondered why geographical indications were so different from other intellectual property rights that they had justified this troubling break with WIPO tradition. She recalled that an explanation had been articulated previously by Germany, which seemed to be that the Lisbon Union was much smaller than the remainder of the WIPO membership and that Lisbon members might be outvoted. In her Delegation's view, this suggested that the choices made by the Lisbon Union would not be choices that the wider WIPO membership would support. Her Delegation also wondered why a small group of WIPO members should be able to use WIPO to internationalize one specific type of geographical indication regime when for other intellectual property rights consensus on international rules had been required to accommodate divergent regimes around the world. The goal of the present Conference should also be a consensus text that would work for all WIPO members.

73. She went on to say that, while her Delegation agreed that intellectual property rights and geographical identifiers were important for development and for ensuring that farmers and producers of handicrafts receive the best price for their products, it was important to stress that trademark systems and *sui generis* geographical indication systems alike could accomplish this objective. Both systems required a continued connection to the producer's original land. Consequently, the New Act of the Lisbon Agreement should accommodate both. Instead, the Basic Proposal, in her Delegation's view, contained text that would force other countries to accept decisions by a geographical indication's country of origin, creating uncertainties in the market that would discourage legitimate trade, in particular by preventing the use or export of products with generic names to the detriment of both producers and consumers. Her Delegation wondered how requirements for re-labeling products bearing common food names with unknown ones would promote development. Her Delegation also remained unclear how diminishing trademark rights would promote job creation and value capture, when such trademarks were relied on heavily in both the developing and the developed world, particularly by SMEs. Without a right to vote, the United States of America and other WIPO members could not be sure that the Lisbon Union would choose wisely between alternatives. She feared that Lisbon members would maintain the *status quo* and introduce only minor changes in the Lisbon System, which would do nothing to increase the system's attractiveness, sustainability and legitimacy.

74. She recalled that the submission from her Delegation, dated February 1, 2015, outlined three principles that were fundamental to intellectual property registration systems, namely territoriality, due process and treatment of geographical indications as private rights. The submission further identified a series of changes that were needed to implement these principles in the New Act of the Lisbon Agreement. This would provide the ability for national governments to protect geographical indications without undue influence by foreign governments while ensuring fair and equitable procedures as well as financial sustainability, thus increasing the appeal of the system. First, the principle of territoriality was important for geographical indication registration systems, because it meant that countries could apply their own national law to determine the existence and scope of protection for a geographical indication in their country. Respecting territoriality would mean that each Contracting Party could make decisions on geographical indication protection that would balance national, not

foreign interests, based on principles set out in its own law. Otherwise, parties were bound to simply give legal effect in their own territory to the originating country's decision. Once that happened, the Basic Proposal would provide a wide scope of protection using vague standards that could eliminate any prior legitimate uses or trademark rights. Moreover, the Basic Proposal made joining impossible for the many countries whose national systems required use, maintenance and enforcement as a condition for continued protection. For those countries whose law required that a geographical indication be used in commerce, the text should allow them to require the applicant to have an intention to use the geographical indication in their territory, as a condition for protection. On the issue of due process, she said that, in order to be acceptable to a wide range of potential Contracting Parties, the Basic Proposal must respect the due process rights of prior users and trademark owners in receiving countries. Pulling locally made goods off the shelves to accommodate a later in time foreign geographical indication which might never be marketed within their territory elevated the foreign right over national interests and national consumers. The Basic Proposal should give full effect to the established rights of third parties enabling them to request invalidation of an international registration on any ground available under national law. It should also give prior trademark owners the right to prevent confusing uses of later conflicting geographical indications to the extent allowed under national law. Further, with reference to geographical indications as private property, she said that any international geographical indication registration system must allow for the fair and equitable operation of national systems and not dictate special treatment for foreign government interests. The text should not authorize governments to operate as a proxy for the owner of a geographical indication and negotiate the geographical indication's protection in foreign markets. Instead, the text should require the identification of the holder of the international registration, so as to allow accessions by the many countries around the world that treated geographical indications as private rights. In this connection, she also highlighted the need to eliminate the financial subsidization that Lisbon Union members had historically enjoyed in funding operations of the Lisbon System. As with all private property, the geographical indication holders that benefited from using the Lisbon System were the ones who should pay for the costs of obtaining protection, rather than other WIPO members or users of other more widely accepted WIPO systems.

75. In conclusion, she said that her Delegation was of the view that the Lisbon System should be revised so as to allow for: (1) collecting individual fees at the national level; (2) establishing a maintenance fee for the international registration; (3) increasing the international application fee; and (4) retaining the current provisions that would provide for funding of the system through Contracting Party contributions. She stressed that, without fundamental changes to both the structure of the Diplomatic Conference and the text, the legacy of the Lisbon System would be a lack of international legitimacy. If the Lisbon members sought a broadly acceptable multilateral agreement, they would need to allow all WIPO members to participate on an equal footing in this Diplomatic Conference. Finally, despite these serious concerns, she reaffirmed the readiness of her Delegation to continue to engage constructively to the extent it would be given any meaningful opportunity to do so in the interest of both its stakeholders and of WIPO as a whole.

76. Mr. WU (China) underlined the importance of the protection of geographical indications for agriculture, rural economy and the potential to improve the income of farmers. He also underscored the significance of the Lisbon Agreement and its revision to all countries, including China, and expressed the hope that the negotiating process would take the path of balance and take due consideration of the different practices of countries, so as to

ensure that the revised Lisbon System would be inclusive, producing equitable and tangible benefits for all participating countries.

77. Ms. RUAMRAKSA (Thailand), joining other Delegations in offering the President of the Conference its total support and cooperation in both the conduct and discussion of the different topics to be dealt with at the Conference, said that it was a crucial time in the evolution of the international protection of geographical indications. Her Delegation was confident that the proposed changes to the Lisbon System would enable it to attract a larger membership while preserving the principles and objectives that underpinned the current Lisbon Agreement. In the course of six years, since the Assembly of the Lisbon Union had established the Working Group on the Development of the Lisbon System, significant resources had been spent to explore if the procedures of the current Lisbon System could be improved and much had been discussed to make the system more attractive for prospective new members. Surveys had been conducted and contributions from States, academia, private enterprises, professional organizations, intergovernmental and non-governmental organizations had been analyzed. Thailand was one of those countries that protected geographical indications under *sui generis* legislation and its government was keen to use geographical indications to support rural development and promote employment in the production and processing of origin-based products and related services. Geographical indications had proven to create distinct value for local communities, as they were deeply rooted in geography, culture and tradition from generation to generation. Thailand had taken the lead in Southeast Asia in identifying and protecting geographical indications and recognizing its geographical indications for agricultural products, foodstuffs and non-agricultural products. As few of them were known and protected globally, she stressed her Delegation's strong interest in a multilateral system that would effectively promote geographical indications, which had the potential of adding value and promoting income and sustainable social development in the long run. In view of the different means of protection for geographical indications around the world, she expressed the hope that the revised Lisbon Agreement would not prescribe a specific legal form of geographical indication protection. In order to make the Lisbon System more attractive, Lisbon member States needed to consider the concerns of non-Lisbon member States and all needed to further engage in discussion to give sufficient leeway to issues that remained unsettled. In conclusion, she underlined her Delegation's commitment to a constructive participation in the deliberations and looked forward to the adoption of the New Act of the Lisbon Agreement.

78. Ms. MOORE (Australia) said that, at this Diplomatic Conference, all had a genuine opportunity to shape an international treaty for the protection of geographical indications that could be inclusive and of global reach. If all made the most of this opportunity, it might be possible to develop a useful and accessible mechanism for protecting geographical indications around the world. A number of Lisbon Union members had indicated their support for creating a system that would be inclusive of different protection systems, including trademark systems, and expressed their willingness to bridge gaps. Her Delegation was strongly committed to engage constructively with Lisbon members in achieving this. In this regard, her Delegation wished to stress that the draft text contained requirements that discouraged or excluded some countries from membership, as they were specific to a particular type of geographical indication protection. Her Delegation firmly believed that such requirements could be relaxed or deleted without affecting the policies and practices of Lisbon members. Flexibility on these few issues would enable a far greater range of countries to consider joining the revised Lisbon Agreement. In her Delegation's view, two of the aims of the current revision process appeared to be competing, namely the preservation of the principles

and objectives of the Lisbon Agreement and an expansion of the Lisbon Agreement's membership. Preserving the principles and objectives of the current Lisbon Agreement might have the effect of reducing its attractiveness and impede the expansion that Lisbon members were looking for. However, if all showed flexibility as to how to achieve these principles and objectives or as to whether these needed to be addressed at all, the Conference could potentially achieve an outcome acceptable to all and allowing for an expanded membership. If producers and farmers from current and future Lisbon members would not be able to use the Lisbon System to acquire protection in countries whose accession to the system would not be possible because of those principles and objectives, this would leave their appellations of origin and geographical indications vulnerable in those countries or create additional costs and complexities, as they would have to seek protection separately.

79. She went on to say that the Delegation of Australia remained committed to making constructive contributions from resolving some of the pending issues in the text. For instance, the revised Agreement could accommodate the different *sui generis* geographical indication regimes and trademark systems while still providing a high level of protection for both appellations of origin and geographical indications. This protection might not be exactly the same in its detail as under the current Lisbon Agreement, but would achieve the stated goals of this revision process. For example, in relation to Article 11(1)(a) on the scope of protection, her Delegation believed that a more inclusive and objective language for Article 11 could help open the Lisbon System to a membership of a wider range of WIPO members while still providing a high level of protection. Article 12, which would protect geographical indications against becoming generic, would prevent countries that used trademark systems to protect geographical indications, such as Australia, from joining the revised Agreement. Article 17(1) was also problematic in relation to the treatment of generic terms. In this regard, she emphasized that most jurisdictions, including in the European Union, prohibited the protection of terms that were generic in their territory. Silence on this in the revised Lisbon Agreement would not affect the existing laws or practices of Lisbon members or any new Contracting Parties, but it would make the revised Agreement more attractive to other countries. In relation to prior trademark rights and Article 13(1), her Delegation was confident that, with some flexibility, a text could be found that would be acceptable to all and be in line with existing international obligations. In relation to the availability of individual fees, she stressed that in countries such as Australia the relevant competent authorities were run on a cost recovery basis. Such countries could not join a system that did not allow them to recover the costs of processing. Further, the inclusion of a reference to the possibility of government negotiations in Article 16(2) risked, among other things, creating the impression that decisions made under national law could be influenced by foreign governments. Article 16(2) was not mandatory and could be omitted without affecting existing practices. In relation to invalidation and Article 19(1), if grounds for invalidation were limited inappropriately, countries that protect geographical indications under trademark regimes would not be able to join the revised Agreement.

80. Ms. KIRIY (Russian Federation) said that the goal of the New Act of the Lisbon Agreement was to increase the attractiveness of the Lisbon System for the international registration of appellations of origin and to extend it to geographical indications, as this was expected to lead to wider participation in the system. In view of the accession of the Russian Federation to the World Trade Organization and its efforts to harmonize the legislation of the Russian Federation with global trends in the area of intellectual property, the adoption of the New Act of the Lisbon Agreement was of interest to the Russian Federation. The Russian Federation was considering the possibility to join the Agreement. This issue would be

considered in light of the outcome of the Diplomatic Conference and the contents of the New Act of the Lisbon Agreement. Geographical indications as a subject matter of intellectual property were a new concept for the legal system of the Russian Federation. The obligation to protect geographical indications stemmed from the membership of the Russian Federation in the WTO. That being said, it should be noted that, in setting the obligation of Member States to protect geographical indications, the TRIPS Agreement did not provide for their mandatory registration. However, given the current trends at the international level, the inclusion of provisions regulating geographical indications in the legislation of the Russian Federation on intellectual property could be considered as a future area of improvement of the national legislation. The Delegation of the Russian Federation had taken part as an observer in meetings of the Working Group on the Development of the Lisbon System. In its statements, the Delegation had repeatedly stressed the need to include in the revised Lisbon Agreement, along with the provision on the payment of a single fee for the international registration of appellations of origin and geographical indications, provisions on individual fees. Individual fees would be charged to cover examination costs by individual members, as well as expenses related to the protection of rights. In the discussions on the draft Articles and Rules, all Delegations should show flexibility, so as to bring their positions closer and help reach agreement on all outstanding issues, including the issue of individual fees. The inclusion of a provision on individual fees in the text of the New Act of the Lisbon Agreement was a fundamental issue for the Russian Federation. The Delegation of the Russian Federation would make every effort to help find solutions which would take into account the interests of all Member States of WIPO in a balanced manner.

81. Ms. KOUBITOBO NNOKO (Cameroon) indicated that over the past few years, Cameroon had had geographical indications whose development had left a significant economic and social impact on producers and production areas. These geographical indications had also contributed in building the reputation and recognition of Cameroon as a producer of local products whose value was recognized and appreciated. It was with great interest that her delegation had monitored and participated, as an observer, in the proceedings on revision of the Lisbon Agreement, which provide an opportunity for geographical indications to benefit from an international protection system. Such protection was of interest to her delegation, considering the multiple violations faced by Cameroonian products at the national and international levels. She hoped that the proceedings of the conference would iron out the few differences that remained in the basic proposal, particularly with regard to protection level, the legal effects of registration and the terms of effectiveness, so that a larger number of countries would accede to this new Act.

82. Mr. CURCHOD (CEIPI) declared that CEIPI had shown a keen interest in the revision of the Lisbon Agreement, ever since the revision proceedings started. Hence, in 2010, CEIPI had submitted a detailed response during the survey on the Lisbon Agreement launched by WIPO. In that response, CEIPI had particularly highlighted the potential that the Agreement held for developing countries, especially as regards protecting and adding value to agricultural products and traditional knowledge. CEIPI had subsequently participated actively in the sessions of the working group that prepared the revision. He was pleased to contribute to the conference and hoped that it would be successful, also adding that a successful conference was one that led to the adoption of a text that satisfied all participants, to the largest extent possible, regardless of their status at the conference. He added that a new Act which ignored most of the claims of a large group of countries and which, for that reason, was intended to attract a relatively small number of new members to the Lisbon Union, would not be a really successful one. Furthermore, a new Act that diluted the current level of

protection would not be desirable either. He therefore wished that the delegations would find compromises to avoid these two pitfalls, but pointed out that the task was delicate, because the law on appellations of origin and geographical indications is one of the most difficult areas, if not the most difficult area, of intellectual property to negotiate at the international level. Such was the case because of the different approaches to protection that exist around the world, essentially the *sui generis* approach on the one hand and the approach based on the law of trademarks on the other hand. Solutions were yet to be found to questions that were very difficult to resolve. These were essentially financial aspects, but also and above all the content of the protection resulting from international registration. CEIPI considered that, if solutions were found to these issues, the conference would be crowned with success. Although there was room for optimism with regard to the financial aspects, issues related to the content of protection would still demand significant efforts.

83. He explained that the ideal would certainly be that the issue on the content of protection be resolved based on the basic proposal by establishing a link between the two systems. To achieve this goal, it would be necessary for the proponents of the *sui generis* approach to somehow moderate their positions and for proponents of the "trademark" approach to accept that the principles and practices of the trademark law would not be applied in their entirety. A compromise could be found that would enable all stakeholders to agree on a common text. CEIPI proposed that this solution be called: Plan A. Should this Plan A fail, the diplomatic conference should be able to fall back on a Plan B. He recalled that he had sketched the contents of this Plan B at least twice before the Working Group (see documents LI/WG/DEV/4/7, paragraph 140 and LI/WG/DEV/9/8, paragraph 36). Plan B suggests a two-tier system, modelled on the Patent Cooperation Treaty (PCT), where the possibility of reservations has enabled several States to be party to the Treaty while refraining to apply an entire chapter thereof, namely chapter II. Several years later, these States had withdrawn their reservation, thus proving the usefulness of this approach. Perhaps these suggestions had been made a little too early in the review process. Nonetheless, CEIPI was inviting the delegations to reflect on what could be a plan B. This plan B would entail including a new provision in article 30, which prohibits any reservations in the text of the basic proposal. This new provision would allow the contracting parties which protect geographical indications through their trademark law to enter a reservation allowing them to implement article 9 without being bound by articles 11, 12, and possibly 13(1), 17(1) and 19(1) and (2) depending on the alternative that would be retained for some of these provisions. As for the other contracting parties, and in order to establish a balance between both parties, they would not also be bound by the aforementioned provisions of the new Act when implementing article 9, with respect to international registrations originating from a Contracting Party that has entered a reservation on the matter. In practice, the effect of this system would be to allow application of the content of protection, primarily the trademark law rather than the provisions of the new Act.

84. The CEIPI representative recognized that a detailed solution based on this idea was more complicated to write than to sketch, but suggested that interested participants should study this suggestion in detail based on a draft that he would provide in French and English. He recalled that this was only a Plan B, that would be implemented only if Plan A failed. However, that Plan B would lay the foundation for a Lisbon Union that aspired to include all WIPO Member States and interested intergovernmental organizations, through the creation of a unique and universal system for the filing and registration of appellations of origin and geographical indications that everyone wished for. He concluded that he would do everything possible to contribute to the success of the diplomatic conference, regardless of the means necessary to achieve that success.

85. Mr. VANRELL (ASIPI) expressed the hope that the long hours would be productive and result in the promotion of the new Act of the Lisbon Agreement. For most countries of the Americas, geographical indications were a very important vehicle of development, just like trademarks and patents. With regard to geographical indications, ASIPI had a Committee composed of over 40 professionals from the Americas and various European countries that had developed a document which, in his opinion, could be useful to the discussions to be held in the days ahead. Hence, with the President's permission, ASIPI wished to distribute that document to the various delegations so that it could contribute to the discussions to be held during this week. The document was in Spanish and English. Lastly, ASIPI, like the delegation of the United States of America, was concerned about the conflict that could arise between trademarks and geographical indications. Hence, the document had suggestions that could throw light on this highly important issue such that an agreement could be reached on a standard document that satisfied the expectations of countries.

86. Mr. MACHADO (INTA) said that INTA was looking forward to a positive outcome of the Conference and would be working to that end, in the same constructive spirit that had guided INTA's involvement in the Lisbon Agreement revision process to date. INTA was a not-for-profit association of trademark owners and professionals from more than 190 countries throughout the world. Representing the trademark community since 1878, INTA was dedicated to the support and advancement of trademarks and related intellectual property as elements of fair and effective commerce and consumer protection. INTA's membership included over 6,500 corporate members and professional firms spanning all fields of commerce and industry. Altogether, the Association's member organizations represented some 30,000 trademark professionals and included brand owners from enterprises of all sizes, law firms and non-profit organizations. INTA supported all forms of branding and was fully convinced of the importance and value of geographical indications for the promotion and marketing of products, particularly in the agricultural and foodstuffs sectors, of producers from all nations, including, in particular, developing nations. At the same time, the protection granted to geographical indications must not prejudice other existing intellectual property rights, including trademarks. INTA believed that it was possible to achieve harmonious co-existence of protection systems for geographical indications and that conflicts between geographical indications and other intellectual property rights, including trademarks, should be resolved on the basis of the well-established intellectual property principles of territoriality, exclusivity and priority. For many years, INTA had taken an active role in international discussions regarding the protection of geographical indications. In connection with the negotiations at the WTO concerning the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits, INTA had developed a concept for a filing and registration system modelled on the Madrid System for the international registration of marks and on the Patent Cooperation Treaty. At WIPO, INTA had actively and constructively participated in the work of the Working Group on the Development of the Lisbon System since the first session of the Working Group in March 2009. INTA's active participation in the work of the Working Group had been guided by the hope that it would lead to an inclusive and balanced registration system that would be open to all geographical indication protection systems, including trademark-based systems, and provide for appropriate safeguards in respect of prior rights. However, there remained a number of provisions and alternative provisions in the Basic Proposal that were not conducive to such an inclusive approach and that would make it very difficult, if not impossible, for countries relying on trademarks in order to protect geographical indications to join the proposed New Act. Besides, the Basic Proposal contained draft provisions and alternative provisions that would or could seriously prejudice the rights of trademark owners, all the

more so as the proposed New Act significantly expanded the scope of the Lisbon Agreement by including therein a new subject matter of protection, i.e. geographical indications, with a significantly broader definition. In INTA's view, this would result in a considerably larger zone of potential conflicts between trademarks and geographical indications. The provisions of the Basic Proposal that were a source of particular concern for trademark owners and/or that would constitute obstacles for countries with trademark-based protection systems in respect of geographical indications to join the proposed New Act of the Lisbon Agreement – thereby defeating what was a major objective of this Diplomatic Conference – included Article 11(1)(a) on the content of protection; Alternative A of Article 13(1) regarding safeguards in respect of prior rights; Article 16(2) relating to negotiations with a view to the withdrawal of a refusal of protection; the caveat in footnote 4 to Article 17 which raised doubts as to the extent to which trademarks were effectively shielded against the effects of that Article; Alternative B of Article 19(1) to the extent that it limited the grounds for invalidation; the wording of Article 8(1) concerning the dependency of the international registration on continued protection in the Contracting Party of Origin; Article 12 to the extent that it would run counter to the territoriality principle and would not take into account, in particular, use requirements under the law of a Contracting Party; and certain variants of Article 7 on fees.

87. Mr. VITTORI (oriGIn) said oriGIn was pleased to participate in the works of the Diplomatic Conference and looked forward to a positive outcome of the negotiations. Recalling that oriGIn had actively participated in the revision process of the Lisbon Agreement, he believed that the text submitted to the Diplomatic Conference contained flexibilities in order to make the Lisbon System more attractive and represented a solid basis for discussion. OriGIn, which represented some three million geographical indication producers from 40 countries that protected geographical indications through *sui generis* and/or trademarks systems – was fully committed to the Lisbon revision process and wished to provide input and pragmatic approaches to unsettled issues. OriGIn held the view that the major advancements of the revision process, as contained in the draft text, were the broadening of the scope of the Lisbon System to geographical indications; the solid level of protection for both geographical indications and appellations of origin; the opening of the Lisbon System to intergovernmental organizations; and the possibility for geographical indication beneficiaries and owners to file applications for international registration under the Lisbon System, if their national law so allowed. OriGIn believed that the Conference was facing a historic opportunity to build a truly international system for the protection of geographical indications and appellations of origin, for the benefit of producers. In that regard, he recalled that misappropriations represented a major problem for producer associations worldwide and that the registration of their appellations of origin or geographical indications in every single jurisdiction to which their products would be exported would be extremely difficult and costly. Geographical indication misappropriation threatened the very existence of many businesses around the world, putting at risk jobs and impeding the sustainable development of countries. OriGIn was confident that the revised Lisbon System could also serve the interests of consumers, who needed to obtain information on geographical indications and products they buy. Recalling the importance of taking into account the point of view of all WIPO Member States, the Delegate encouraged all Lisbon Member States to consider all views presented and engage in pragmatic discussions as much as possible, so that a result would be achieved that would allow for a large number of States to join the New Act.

88. Mr. LONDOÑO FERNÁNDEZ (Columbia) indicated that it was important for his delegation to highlight the fact that geographical indications known under various names as appellations of origin, collective marks, certification marks, and own marks had the common characteristics of being competitive tools that were good for rightholders, owners or beneficiaries, depending on the system that each country chose. He added that his delegation held the view that appellations of origin and trademarks were tools that ensured market transparency. This was good for consumers and also resulted in healthy competition among market players who had mutual respect for each other's efforts without exploiting them unduly. Consequently, both trademarks and appellations of origin were industrial property rights.

89. The PRESIDENT adjourned discussions on item 10 to ask the Legal Counsel to report to the Plenary on the informal consultations organized for different elections.

Election of the Vice-Presidents of the Conference

Election of the Members of the Credentials Committee

Election of the Members of the Drafting Committee

Election of the Officers of the Credentials Committee, the Main Committees and the Drafting Committee

90. Mr. KWAKWA (WIPO) indicated that nominations for the Officers of Main Committee I had been received. However, informal consultations continued in respect of the composition of the Credentials Committee, the Drafting Committee and Main Committee II.

91. The PRESIDENT requested Mr. Kwakwa to announce the outcome of the informal consultations on the election of members of Main Committee I.

92. Mr. KWAKWA (WIPO) announced that, as a result of the informal consultations in respect of the composition of Main Committee, it was proposed that the Chair of Main Committee I be Mr. Mihály Zoltán Ficsor from Hungary, and the two Vice-Chairs Ms. Lilia Bolocan from the Republic of Moldova and Ms. Véronique Fouks from France.

93. The PRESIDENT noted that since this was the result of intensive consultations, the Diplomatic Conference could endorse these names for membership of Main Committee I and adjourned the session.

Third Meeting Tuesday, May 12, 2015 Afternoon

Election of the Vice-Presidents of the Conference

Election of the Members of the Credentials Committee

Election of the Members of the Drafting Committee

Election of the Officers of the Credentials Committee, the Main Committees and the Drafting Committee

94. The PRESIDENT returned to outstanding matters relating to the election of officers of the Conference, namely items 5, 6, 7 and 8 of the agenda. He indicated that the Secretariat had managed to identify candidates for all outstanding positions of the Conference and the list of candidates was found in Document LI/DC/INF/3 Prov. As regards the Drafting Committee, he indicated that there were still some positions to fill. Hence, consultations would continue, and the vacant positions would be filled at the next plenary. However, the President believed that the Conference was able to elect all the officers it needed to do its work without delay.

95. Mr. KWAKWA (WIPO) explained the selection process of the acting President of the Conference in accordance with Rule 16 of the Rules of Procedure and the precedence among the Vice-Presidents under Rule 15 of the Rules of Procedure. Further, he presented the box containing the names of the seven Vice-Presidential candidates by country names and kindly invited the President to proceed with the selection of “the ranking” Vice-President.

96. The PRESIDENT then proposed a joint adoption of the names contained in Document LI/DC/INF/3 Prov. Seeing no objection, the President declared the names contained in the document as approved. Nevertheless, the President indicated that lots must be drawn to select a Vice-Chair who would replace the President, whenever he is not able to preside over the plenary.

97. The PRESIDENT moved on to the drawing of lots.

98. Mr. KWAKWA (WIPO) announced that Israel was drawn by lot, in accordance with Rule 15(6) of the Rules of Procedure, to determine “the ranking” Vice-President of the Conference.

99. The PRESIDENT adjourned the session.

Fourth Meeting Friday, May 15, 2015 Morning

Agenda item 11: Consideration of the first report of the Credentials Committee

100. The PRESIDENT informed the Plenary that he wished to brief delegates on the Steering Committee meeting that had just concluded with some organizational matters and then give the floor to the Chairman of the Credentials Committee to report on their proceedings.

101. With regard to the Steering Committee meeting, he informed participants of his satisfaction with the progress achieved over the last three days devoted entirely to the proceedings of Main Committee I. He indicated that considering the progress achieved by this Main Committee it had been agreed within the Steering Committee that the same method of work would be maintained today and during the weekend if necessary and that the Chairs of the Main Committees had the discretion to decide on the format and time of meeting during the weekend. He said the idea was to have a new summary report on Monday at 8.30 a.m. for

the Steering Committee and a new plenary session at 10 a.m. on Monday to report on progress made over the weekend and the organization of discussions for the following week. He thanked the Conference for the efforts made so far and encouraged them to continue working in the same spirit, emphasizing that the Chairs were doing a great job and everyone was confident that under their chairmanship it would be possible to achieve substantive agreements on all outstanding issues. He repeated that the plenary would reconvene on Monday at 10 a.m. to hear a new report of the Steering Committee, determine the stage at which they were and how they would continue to negotiate. He added that they would also meet on Monday to hear the Chair of the Credentials Committee submit his second report for a second time. He then gave the floor to the Chair of the Credentials Committee to present the first report of the Committee.

102. Mr. RAMALHEIRA (Portugal) reported to the Plenary that the Credentials Committee had held a first meeting on May 13, 2015 to examine credentials, full powers, letters and other documents of appointment that had been presented for the purposes of Rules 6 and 7 of Rules of Procedure. He announced that the full report of the Credentials Committee was available in document LI/DC/10. Concerning Member Delegations, the Credentials Committee had found in order the credentials and full powers of 10 Delegations and the credentials without full powers of 18 Delegations. The Credentials Committee had therefore concluded that the 28 Member States of the Lisbon Union were fully accredited. With respect to Special Delegations, the Credentials Committee had found in order the credentials of the Delegations of the African Intellectual Property Organization (OAPI) and the European Union. Furthermore, concerning Observer Delegations, the Credentials Committee had found in order the credentials with full powers of two States and the credentials without full powers of 78 States. He finally reported that the Credentials Committee had also checked the letters or documents of appointment of representatives of five intergovernmental organizations and 15 non-governmental organizations. He said that the Credentials Committee recommended to the Plenary to accept the credentials and full powers of these Delegations as well as the letters or documents of appointment of the representatives of the organizations which had been presented so far. He concluded by announcing that the Credentials Committee would meet again on Friday, May 15 to examine documents submitted after its first meeting. He intended to present to the Plenary the final report of the Credentials Committee on Monday, May 18 under Agenda Item 13.

103. The PRESIDENT commended the report of the Chair of the Credentials Committee which had so far accredited 110 delegations. This was very good news that reflected interest in the Conference and the scope of participation. He recalled that on Monday a second report would be presented with updated information.

104. Mr. AZAMI SARDOUEI (Iran (Islamic Republic of)) expressed his Delegation's strong reservation concerning the parts of the report of the Credentials Committee, as well as all related documents of the Diplomatic Conference, which could be construed as a recognition of the regime of Israel. In addition, he stated that the Government of Iran (Islamic Republic of) was not bound by any decision which ran counter to its well-established position in this regard.

105. The PRESIDENT thanked the Delegation of Iran (Islamic Republic of) for its statement on the report of the Credentials Committee and assured them that their position would be duly recorded in the proceedings of the Diplomatic Conference.

106. The PRESIDENT adjourned the session.

Fifth Meeting
Monday, May 18, 2015
Morning

107. The PRESIDENT declared that he had convened the plenary session to hear the second report of the Chair of the Credentials Committee and report on the Steering Committee meeting held in the morning.

108. Mr. RAMALHEIRA (Portugal) said that the Credentials Committee had held its second meeting on May 15, 2015, and its report was available in document LI/DC/12. As far as Member Delegations were concerned, the Credentials Committee had received further credentials and full powers of one Delegation. As far as Observers were concerned, the Committee had received further letters and documents of appointment of one intergovernmental organization and three non-governmental organizations. After review of the documents submitted, the Committee had decided that one Delegation would appear as bearing credentials and not full powers as previously stated. To date, the Credentials Committee had received a total number of 12 credentials with full powers, and 101 credentials without full powers, which had been found in order by the Committee. The Committee had decided that, if necessary, it would re-convene to examine any further submissions that might be received by the Secretariat.

109. With respect to the Steering Committee meeting held in the morning, the President underscored the shared feeling of optimism, considering that the previous week's work had been very intense and fruitful and a host of issues had been resolved. He added that from that day onwards, efforts would focus on outstanding and sensitive issues. He observed that the Steering Committee was aware that the Conference would end on Thursday and that for various technical reasons, the negotiation process therefore had to end on Wednesday. He stated that there was not much time left to resolve these sensitive issues, but the Steering Committee was certain that if they maintained the same momentum, they could, by tomorrow, come up with a much more concrete idea of the issues they had not been able to resolve within the Main Committees. The President declared that he was ready to play that role in order to end up with a revised Lisbon Agreement that contained most of the issues considered pending as of last year. He also observed that in the days ahead, they would have to take decisions on what would finally be included in this revised Lisbon Agreement. He reminded all participants to be aware that they had to make their greatest and best efforts to ensure that they use the remaining time to include the greatest number of issues into the revised Lisbon Agreement and to reach consensus on the inclusion of the greatest number of issues. He observed that the challenge was great, but fortunately they had two Chairs who were highly capable of obtaining solutions for including issues that had hitherto remained unresolved.

110. The PRESIDENT adjourned the session.

Sixth Meeting
Tuesday, May 19, 2015
Morning

111. The PRESIDENT requested for attention to explain that the plenary was not scheduled, but Steering Committee members had deemed it important, at the end of their meeting, to inform the Plenary of the subject matter of their discussions. He said this would have an impact on the evolution of the proceedings in the time that remained. The President emphasized that it was important for all delegations to have the same information and the same understanding of the issues discussed in the latest meetings, what remained to be resolved, as well as the time frame and deadlines for resolving such issues. The first thing that he wished to share with the Assembly was the sense of optimism within the Steering Committee. The President observed that a series of key issues had already been resolved. He said that of the 17 issues pending at the beginning of the Conference, an agreement in principle had already been reached on the six issues classified under Group A; an agreement in principle had also been reached on two of the three issues in Group C and the third was being discussed, but the prospects of getting a solution were apparently good. The President explained that this meant there were two major, and probably most sensitive, issues to be resolved that day. He said that the first group of pending issues were four outstanding issues in Group B and Group D; the chapter relating to financial matters. He observed that the Conference had to take decisions in advance on the scope of protection, articles relating to the scope of protection, and articles relating to financial issues and costs. The President said that he had asked the two Chairs of the Main Commissions to devote all their efforts that day to reaching a conclusion on these two large chapters. He observed that much progress had been made and believed that the prospects were good. The President added that if all participants played their part, it would be possible to reach a point of understanding on these issues that day. In addition to his message of optimism and his call for flexibility, the President recalled that they only had that day left to conclude the consideration of pending issues. He declared that the Steering Committee was ready to meet at any time, once the Chairs of the Main Committees informed them that, based on their criteria, an agreement had been reached, hopefully on all outstanding issues, or that some issues could not be resolved, even at the level of the Main Committees.

112. The PRESIDENT declared that the negotiation time was in hands of the Chairs of the two Main Commissions. He added that the Steering Committee thought it was important that in a Plenary session all conference participants should bear in mind that, for various reasons including technical and political ones, the negotiation could not, under any circumstances, go beyond that day. He then explained that any issues not resolved on that day would revert to the Steering Committee. In consultation with the Steering Committee, and in his capacity as President, he said that he would make a proposal, hoping that the proposal would yield the package which they had resolved to adopt at the end of this Conference. The President then reminded delegates that on Thursday the revision document of the Lisbon Agreement would be adopted. He said that day would be crucial because it was an opportunity to find a point of understanding on outstanding issues. In any case, at the end of that day, the Steering Committee would receive reports from the Chairs of the two Main Committees and take the appropriate decisions to achieve the set goal. He explained

that this was the way they would proceed on that day and urged participants to demonstrate the greatest understanding and flexibility possible. He observed that this was a unique opportunity for participants to formulate a better Lisbon Agreement. He said everyone had to be conscious of this responsibility and opined that if any issue was not resolved now, then it would be difficult to know when it would be resolved again. He said that was his message in a nutshell, and urged participants to fully assume their responsibility. The President concluded with the hope that at the end of that day's negotiations, the Chairs of both Main Committees would have good news to share with all.

113. The PRESIDENT adjourned the session.

Seventh Meeting
Wednesday, May 20, 2015
Morning

114. The PRESIDENT briefed the plenary on the outcomes of the just-ended Steering Committee meeting and informed them on how the proceedings would be conducted that day. He said that the mood of the Committee meeting had been frankly optimistic and that he was very satisfied with the recent progress made, since the prevailing feeling was that there were reliable texts which could be submitted to the two Main Committees for a formal decision. In that respect, he explained that once the texts had been distributed, participants would be given a reasonable albeit brief time to verify that the clean copies were indeed consistent with the agreements reached a day earlier. He informed the Plenary that after the current session, Main Committee I would meet to review the items that were discussed within the Steering Committee and take a decision on the content of the articles that may be transmitted to the Plenary. He clarified that the Main Committee I meeting would begin at 11 a.m. while Main Committee II would meet at 2 p.m. He then indicated that a plenary was convened for 3.30 p.m., during which recommendations would be received from both Main Committees and decision taken on the texts. He concluded that they were on the threshold of a highly successful outcome. Consequently, he urged the delegations to not weaken the efforts and commitment they had shown hitherto. He reiterated that they were actually on the threshold of a very satisfactory conclusion to the Diplomatic Conference, with all what that meant not only for the Lisbon Agreement but also for WIPO in general.

115. The PRESIDENT adjourned the session.

Eighth Meeting
Wednesday, May 20, 2015
Afternoon

116. The PRESIDENT said that this plenary session would essentially be devoted to the adoption of the new Act of the Lisbon Agreement. However, he first gave the floor to the Chair of the Credentials Committee to present his final report.

117. Mr. RAMALHEIRA (Portugal) said that, since its meetings on May 13 and 15, 2015, the Credentials Committee had received and found in order the credentials and full powers of the Delegation of Gabon.

118. The PRESIDENT said that the Conference had taken note of the report of the Credentials Committee.

Adoption of the Geneva Act of the Lisbon Agreement for the Protection of Appellations of Origin and Geographical Indications

119. The PRESIDENT said that he had received the reports of the Chairs of Main Committees I and II, which had concluded their proceedings and recommended that the Plenary should adopt the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications as well as its Regulations. Considering the reports received from both Chairs of the Main Committees, the President understood that the text which the Conference had to approve, contained in Document LI/DC/16 of May 20, 2015, was ready for their consideration. Having been informed that some delegations may be interested in commenting on the document, the President indicated that he would open the floor immediately after the plenary had taken action on the document he had just mentioned.

120. The PRESIDENT asked if the Diplomatic Conference was ready to adopt the new Act of the Lisbon Agreement on appellations of origin and its international registration as contained in Document LI/DC/16, without a vote. Since there were no objections, he declared the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications as well as the Regulations under the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications adopted.

121. The PRESIDENT expressed gratitude for the adoption of the New Act and for the flexibility and efforts made by all participants. He added that they all had to be satisfied for arriving at the conclusion of such a long negotiation and that it was a transcendental moment for the Lisbon Agreement and the Organization in general. He also highlighted the extraordinary work done by the Chairs of Main Committees I and II, and the support he had received from WIPO through the Director-General, the staff of the Secretariat and the Steering Committee.

122. The PRESIDENT then opened the floor for general comments.

123. Ms. HORVÁTH (Hungary) wished to congratulate the Conference on the success of the Diplomatic Conference. She expressed her appreciation to the President for his able guidance which had led the Conference to the positive outcome after thorough discussions. She also expressed her gratitude to the Director General of WIPO and the International Bureau for the excellent work and the support that they continued to provide throughout the entire process. Her Delegation was pleased to see that the Conference had achieved the main goals of the revision of the Lisbon Agreement, i.e., the refinement and modernization of its legal framework, the establishment of a global registration system covering geographical indications, and opening up the system to competent intergovernmental organizations. The

Delegation was also pleased to note that, in pursuing those goals, the Conference had also managed to preserve the principles and values of the current Lisbon Agreement while bearing in mind the interest of those that the entire revision should ultimately serve. She believed that the Conference had adopted a text which would live up to the expectations of producers relying on geographical indication regimes and ensuring that geographical indications functioned as reliable guarantees for consumers. Furthermore, the Conference had adopted appropriate measures to ensure the financial balance and self-sustainability of the Lisbon System. She expressed the hope that the revised Lisbon Agreement would contribute to transforming the Lisbon System into a truly global WIPO administrative instrument for the protection of intellectual property. Her Delegation believed that the Conference had adopted an inclusive approach and that all Delegations wishing to engage in the revision of the Lisbon Agreement had been allowed to contribute to the substantive debate on outstanding issues. Inspired by the constructive spirit of all participants and their efforts to balance modernization of the Lisbon System with the preservation of its basic values, the Geneva Act and its Regulations contained all the necessary flexibilities to allow the accession of prospective new Contracting Parties.

124. Mr. MARTIN (France) thanked the Chair and conveyed the apologies of the head of the Delegation of France for his absence. The head of delegation would have liked to personally thank the President and the chairs of the two Main Commissions for their remarkable work. He especially thanked the three presidents for their tenacity, transparency and tranquility which introduced an atmosphere of serenity into the discussions. He also thanked all the observers who had, for several months adopted positions that were more or less favorable to the revision of the Lisbon Agreement. However, he hoped that the majority of them could join forces by adhering to the revised Lisbon Agreement. He specially thanked the members of the Lisbon Union. This revision of the Lisbon Agreement, started within WIPO six or seven years ago, had made it possible to overcome many traditional differences. Almost all regional groups were present within the Lisbon Union. New contacts and new approaches had created a new dynamic that would be exploited subsequently to enrich future WIPO proceedings on and increase understanding of other issues. The geopolitics were somewhat different from the often Pavlovian and anticipated character of discussions at WIPO. He thanked the Director General of WIPO, whose position was not an easy one; the Secretariat for doing a great job; as well as the translators and technical teams for managing the conference and its night sessions. He thanked them for their dedication.

125. On substantive issues, and without delving into an exegesis of the revision of the Agreement, he thought it was important to emphasize that this was a victory for the diversity and plurality of the modes of protection in international trade. This international register of geographical indications would coexist with the trade marks regime and it was this notion of peaceful coexistence that reflected the said plurality and diversity. Multinational companies still had good times ahead. This was cause for celebration and not for worry, because they were generating thousands and thousands of jobs. However, a thought must also be spared for the small producers on French territory, in remote and peripheral regions, and for geographical indication producers in developing countries who are struggling to pull their countries ahead and combat rural exodus, by attempting to operate on the basis of territorial and often ancestral data, which they have a duty to preserve.

126. Finally, he welcomed the responsible positions adopted by members of the Lisbon Union, who had had discussed far into the night and held long sessions, sometimes on weekends or public holidays, because they wished to go as far as possible in giving observers

an opportunity to contribute to the proceedings. France, in particular, had made significant efforts, especially in budgetary terms, to open up many opportunities for responsible State funding, where France will play its full role. Stressing the importance of geographical indications for the economy of France, he declared that his country would not default on its budgetary responsibilities. This message of responsibility and reassurance was addressed to the entire assembly.

127. Mr. SCHMIDLIN (Italy) expressed his appreciation to the President for his wise and effective chairmanship of the Diplomatic Conference. He also expressed his gratitude to the Chairs of the Main Committees for their excellent stewardship of the discussions, and to the Director General and the Secretariat for their support. He further thanked all participating Delegations for the constructive attitude they had shown during the Conference and for the contribution they had given to its positive conclusion. The Delegation of Italy welcomed the adoption of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and believed that the Act would make the Lisbon System more effective and attractive, thus paving the way for new accessions. The extension of the system to geographical indications together with the scope of protection provided for in the Geneva Act would also encourage new applications from producers and, thereby, improve the finances of the Lisbon Union. In his view, the Act constituted a meaningful instrument for economic development and job creation, which would enable Contracting Parties from developing and least developed countries to harness the benefits arising from the use of appellations of origin and geographical indications. It was important that the Secretariat within its activities promote the Act and, upon request, provide assistance for its implementation. As the adoption of the Geneva Act fulfilled the goals of the revision of the Lisbon Agreement, his Delegation wished to express its gratitude to all States, both members and observers of the Lisbon Union as well as the international organizations and stakeholder associations, for their trust in the process and for the engagement they had shown since 2009. The Geneva Act was the result of a transparent and inclusive Diplomatic Conference, where Member and Observer Delegations had been given ample opportunity to present their views and to advance proposals with no differentiation having been made between Member and Observer Delegations. The Act reflected the genuine efforts made by the Delegations to bridge gaps and to come closer to each other's positions and find compromises. The instrument contained flexibilities that took into account existing differences in national legislations on the protection of geographical indications and appellations of origin. While the diversity of views still remained, the Diplomatic Conference and the overall process of the revision of the Lisbon Agreement had contributed to a better understanding of such diversities and had significantly reduced the gaps. This was perhaps one of the most promising results of the Conference. He wished to underline that not all the proposals put forward by the Delegation of Italy had been accepted; concessions had been made, in a constructive spirit, in order to achieve a balanced result and increase the attractiveness of the Lisbon System as much as possible. Thus, he expressed the hope of his Delegation that the Geneva Act would lay the foundation of a strong, prosperous and effective Lisbon System that would meet the demands of producers, whether they were small farmers, SMEs or established businesses. Finally, while the financing of the system would require further discussion in the Assembly of the Union, he was confident that a balanced solution would be found to ensure the healthiness of the system while preserving its attractiveness for both States and users.

128. Ms. KOPECKÁ (Czech Republic) expressed her appreciation to the President and the Vice-Presidents of the Conference, and to the Chairmen of the Main Committees for their

efforts in finding compromise solutions and their leadership in bringing the Conference to a satisfactory conclusion. She also expressed her appreciation to the Director General and the WIPO Secretariat for the preparatory work and for the excellent support during the Conference. The Delegate noted that huge efforts had been made to ensure a fully transparent discussion, both in the informal and formal negotiations, and to accommodate the concerns of all WIPO Member States. She believed that the Delegations had shown flexibility to look for common grounds, not only within the Lisbon Union membership but on a much larger scale. Despite various concessions made by her Delegation, she was convinced that the Geneva Act represented a success in the modernization of the Lisbon System, for the benefits of users.

129. Ms. TRINDADE (Portugal) expressed her gratitude to the President of the Conference, the Chairs of Main Committees I and II, the Director General, the WIPO Secretariat and all Member, Observer and Special Delegations for the efforts made to achieve the positive result that had been reached. Her Delegation believed that the discussion on pending issues had been very fruitful, so that the Basic Proposal could be amended and accommodated, as far as possible, all views and concerns expressed by Delegations. While compromise had been found on several subjects, the Delegation of Portugal regretted that it had not been possible to overcome all differences with regard to the protection of geographical indications and appellations of origin. She believed that on important subjects, such as the scope of protection, her Delegation had shown enough flexibility to find well-balanced compromise solutions. The same approach had been taken with regard to other issues alien to its national legislation. She believed that the Conference had also managed to identify a number of sources of financing that could guarantee the sustainability of the Lisbon System in combination with its attractiveness. In conclusion, she welcomed with satisfaction the adoption of the Geneva Act of the Lisbon Agreement, which her Delegation believed would turn out to be a very useful instrument for promoting the protection of appellations of origin and geographical indications throughout the world and encouraging new accessions.

130. Ms. HERNANDEZ NARVAEZ (Mexico) declared that over the last ten days her delegation had been part of the open and inclusive process scrupulously followed by the Diplomatic Conference to consider each and every comment of participants, especially observer delegations. Right from the opening session of the Conference, an opportunity was given to all WIPO Member States to present their contributions, observations and concerns. During the numerous formal and informal sessions, there had been an enriching and inclusive exchange that had made it possible to achieve the outcomes and proposals of the Lisbon Agreement and its Regulations. She commended the hard work of the two Chairs of Main Committees I and II, which attested to their patience, negotiation skills and leadership in guiding the proceedings during each session, including late into the night. She also congratulated the President because his determination in the process had been crucial to the achievement of the Conference outcomes. She observed that the Conference participants had witnessed a historic process which concluded after three years of arduous work to achieve a more attractive system for the Lisbon Agreement. She congratulated WIPO and Member States for this collective effort which demonstrated significant progress in the regulatory domain. In conclusion, she thanked the Director General and all the Secretariat staff who had made the Diplomatic Conference possible, and obviously the interpreters whose work was, is and will remain essential to the deliberations.

131. Mr. OKIO (Congo) commended the President and members of the two main committees, for their tireless efforts and patience, which had contributed to the positive outcome of the diplomatic conference. The Delegation of Congo was satisfied with the

outcomes of the conference. He expressed gratitude to delegates from Member States of the Lisbon Union, delegates from observer States and all other delegates at the conference for the quality of discussions on geographical indications, throughout the 10 days of proceedings. His delegation had been enriched by all these experiences. The Geneva Act of the Lisbon Agreement and the Implementing Regulations of the Act which had just been adopted were consistent with the modernization objectives set at the beginning. However, they would also contribute to the development of the agricultural and handicraft potential of many developing countries including Congo. He thanked the Secretariat and the interpreters for their invaluable support. He wished that the Geneva Act would open a new horizon for the Lisbon Agreement, make it more attractive and increase the number of its members.

132. Mr. ESFAHANI NEJAD (Iran (Islamic Republic of)) expressed his delegation's gratitude to the President of the Conference and of the Chairmen of Main Committees I and II. He also thanked the Director General and the WIPO Secretariat for the preparation and organization of the Conference in a professional manner. His Delegation believed that the Geneva Act of the Lisbon Agreement was an attractive, inclusive and robust instrument for preventing the misuse and misappropriation of geographical indications and appellations of origin, which would benefit all producers from both developed and developing countries and would be a reliable tool for the protection of products linked to geographical indications, culture, tradition and heritage at an affordable cost. He also expressed his gratitude to all Delegations for the open and constructive approach during the negotiations, which had enabled the Diplomatic Conference to reach this path-breaking and great achievement. Finally, he expressed the hope that the same spirit of cooperation would guide all towards the realization of common goals and objectives.

133. Ms. MORENO (Nicaragua), speaking on behalf of her delegation, thanked the President, the Director General and the entire team of the International Office, for the work and efforts made to successfully hold the Conference diplomatic. She recognized that the outcome was harmonious and their work had been constructive and she could state with conviction that the meeting days had been fruitful. Her delegation thanked all delegations for their flexibility in all deliberations and also congratulated them for their active participation and spirit of cooperation demonstrated in each of the sessions. She was pleased that the majority of countries had supported this new agreement and that they had successfully achieved their set goal. The Delegation of Nicaragua highlighted the importance of geographical indications and appellations of origin in the economic, social and cultural development of sectors that produced or manufactured products with a historical background, a strong identity and deserving recognition for their qualities based on natural climatic conditions and traditional means of production. That was why her country had shown great interest in the adoption of this Agreement, and believed that every effort of small producers must of be recognized and, above all, protected. Her delegation was confident that this new agreement would make the Lisbon System more attractive to States and users, and that it will be an instrument for facilitating the international protection of geographical indications and appellations of origin. Since the general principles of law had pride of place in such agreements, she urged all WIPO Member States to take advantage of their adherence to this agreement.

134. Ms. SÁNCHEZ TORRES (Cuba) congratulated the President on the excellent work done as well as the Chairs of Main Committees I and II for the hard work done during the Diplomatic Conference. She congratulated the members of the Lisbon Union for their flexibility in seeking to obtain a text of the Geneva Act of the Lisbon Agreement on

appellations of origin and geographical indications in a consensual manner. Lastly, she welcomed the active participation of observers and thanked the Secretariat and the interpreters for their work.

135. Ms. BOLOCAN (Republic of Moldova) wished to congratulate the President for his skillful guidance of the work of the Diplomatic Conference. She also extended her thanks to the Director General and to the WIPO Secretariat for the hard work in preparation of the Conference and for their efforts to make the event a successful one. It had taken about six years for the Working Group on the Development of the Lisbon System to prepare a proposal that could make the Lisbon System more attractive and easy to use, while maintaining its basic ruling principles and main objectives. Her Delegation recognized that the long-awaited document had raised many discussions and controversial disputes in the last 10 days, but all Delegations had been actively involved in the reformation process. She had noted with satisfaction that all collective efforts and spent resources had been rewarded. In her Delegation's view, the Geneva Act of the Lisbon Agreement established an equitable, non-discriminatory and attractive international system for the protection of geographical indications, which was open not only to the current membership, but also to new countries and intergovernmental organizations, which she invited to consider their accession in the coming years. In order to capitalize its agriculture and cultural heritage as a country brand, her country had developed its geographical indication system. This had been one of the main objectives of the National Strategy on Intellectual Property 2020, which had resulted in a modern geographical indication legal framework had been developed as well as corresponding institutional capacities for the competent authorities. Work on promoting the advantages of the system for sustainable economic development was ongoing. It was of great importance that the Geneva Act covered geographical indications alongside with appellations of origin and that both benefited from the same level of protection. Her Delegation believed that the provisions of the Geneva Act provided an additional opportunity to consolidate the international intellectual property community through shared access to origin-linked assets, regardless of existing legal differences at national levels. Through the provisions related to trans-border geographical areas and by attributing to the beneficiaries the possibility of filing international applications directly, the Lisbon System became more attractive for States and more flexible for users. Her Delegation recognized that it had not been an easy task to achieve the abovementioned results. Despite strong debates and different views on some issues, the Member States of the current Lisbon Agreement had managed in a transparent and inclusive way to adopt the amendments. In this regard, her Delegation wished to commend the able leadership and dedication of the Presidents of both Main Committees. She affirmed her Delegation's commitment to engage in any further efforts required for the implementation of the Geneva Act as an effective instrument and looked forward to a fruitful cooperation with WIPO, its Member States and other interested stakeholders. Finally, she expressed her sincere appreciation to all Delegations for their contributions to the successful outcome of the Conference.

136. Mr. ROSSI COVARRUBIAS (Peru) thanked the President and the Chairs of Main Committees I and II, for the great efforts deployed day and night that had led to adoption of the Geneva Act. He also extended thanks to the Director General and his team. Secondly, she declared that the Diplomatic Conference had occurred at a special time for the Organization and all its members. It had demonstrated that after the adoption of the Beijing Treaty in 2012 and the Marrakesh Treaty in 2013, WIPO was once again capable of achieving a positive and concrete result at the multilateral level. Thirdly, he commended the openness of members during discussions, as well as their observance of the principles of inclusiveness

and transparency. The Geneva Act was the result of a frank exchange of views begun not on May 11, 2015, but seven years ago. Without doubt, there had been a combination of efforts, both of the full-fledged members and of those who are observers today and whom he expects to adhere to this new Act. At a time when the objectives of the Lisbon Agreement should be preserved, he believed that the Act would provide producers, especially those from the developing countries, and small and medium-sized enterprises with an effective tool for competing in the global market and benefit consumers by providing them with new appellations of origin and geographical indications. Lastly, he thanked the interpreters, without whom it would not have been possible to achieve this result.

137. Mr. GIGOV (the Former Yugoslav Republic of Macedonia), congratulating the President and the Chairmen of Main Committees I and II for their able leadership and exceptional work in steering the debates in a constructive manner, welcomed with satisfaction the adoption of the Geneva Act of the Lisbon Agreement. He commended the work of all Member and Observer Delegations for their constructive contributions and positive attitude geared towards the production of a New Act which would induce other States to become members of the Lisbon Union. He was confident that with the Geneva Act the international community had placed significant importance on the protection of appellations of origin. He expressed the hope that the Act would be useful in light of contributing to rural and regional development. It was of essential benefit for all regions to have their traditional products protected and the Geneva Act reaffirmed the provisions that dealt with the misappropriation of geographical indications. Following the inclusiveness of the process and the wide interest expressed by many Delegations, his Delegation was of the view that the Geneva Act would increase the membership of the Lisbon System and make it self-sustaining. The work done in the past two weeks had enabled the creation of a refined Lisbon System that accommodated the concerns of all Delegations.

138. Mr. KLINKA (Slovakia) expressed his Delegation's sincere gratitude and congratulations to the President of the Conference and to the Presidents of both Main Committees. Together, they had been leading the process and facilitating negotiations wisely and in an effective way, showing significant amount of flexibility and goodwill, hand in hand with an adequate pragmatic approach. He also thanked the Director General and the International Bureau of WIPO for all of their efforts. He said that the joined work of all participants in the Diplomatic Conference had to be appreciated. Looking at the outcome of 10 days' work, his Delegation was pleased that a well-balanced compromise text of the Geneva Act of the Lisbon Agreement had been achieved. He underlined that the discussion at the Diplomatic Conference, both in informal and formal format, had been inclusive, transparent and with an open-minded spirit. His Delegation looked forward to further continuing the development of the Lisbon System and invited other countries to consider joining the System.

139. Ms. PEROVIĆ (Montenegro) said that her Delegation attached great importance to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and considered its adoption a remarkable achievement. She appreciated the work and dedication of the President of the Conference and the Presidents of Main Committees I and II, recognizing that their task had not been easy and that the process had taken a very constructive, open and expert way. She also extended her appreciation to the Director General and the International Bureau of WIPO as well as to the translators for the overall work regarding the revision process of the Lisbon Agreement. She also wished to express her Delegation's gratitude to all Member and Observer Delegations that had participated in the

negotiations in an inclusive and transparent manner. Her Delegation was confident that the Geneva Act made the Lisbon System more attractive to all, in particular to small producers from developing and least developed countries. For her country, it opened a new window and perspective in the protection of geographical indications for its authentic products. While strengthening and modernizing the current framework of the Lisbon System, the Geneva Act preserved its principles and objectives. The outcome of the Conference along with the outcomes of the Beijing and Marrakesh Diplomatic Conferences showed that cooperation and mutual understanding between Member States could maintain a balanced and effective intellectual property system. The spirit of multilateralism had again prevailed. Finally, she reiterated the commitment of her country to the future normative agenda of WIPO.

140. Ms. WHYTE GOMEZ (Costa Rica) said that the Delegation of the Republic of Costa Rica welcomed the extraordinary work done by the Chairs of Main Committees I and II, and the President of the Conference. Under his proper guidance, some crucial issues of the Diplomatic Conference had been resolved and successfully concluded. She also thanked WIPO, its Director General and the Secretariat, interpreters and the entire support team for the excellent preparation of the conference and their invaluable contribution to the achievement of set goals. Her delegation expressed its satisfaction with the work done over the past two weeks. The outcomes reflected the hard work and dedication of all delegations. We now had a consensus text that, to a large extent, reflected the positions of the countries attending the Conference. It had been an arduous and participatory work, that had provided them with much feedback. The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications was now a reality which, from her perspective, provided a robust legal framework for the protection of geographical indications and appellations of origin. In her view, the text adopted that day was more favorable to the interests of contracting parties and would encourage new members to join since it had increased the scope and flexibility of the system. Furthermore, her delegation was pleased with the achievements accomplished with great effort to guarantee the financial health of the Lisbon system in future, as well as recognition of the economic efforts being generated by the system in each of the Contracting States. She considered that the objective pursued in the Diplomatic Conference had been largely attained and urged Member States and international organizations International to do their best to subscribe, within the shortest time possible, to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications so that it would soon become effective.

141. Ms. CHARIKHI (Algeria) thanked the Chair for the efforts made in conducting the proceedings. She thanked the Director General for his tireless efforts and the chairs of Main Commissions I and II for their efforts and their work. She also thanked the Secretariat and the delegations for their spirit of compromise. His delegation welcomed the adoption of the Geneva Act, which was a historic step for WIPO as regards the international protection of appellations of origin and geographical indications. She stressed that the Delegation of Algeria had participated actively in the two main committees and welcomed the constructive spirit that had today led to the adoption of this important treaty. Her delegation held the view that the Geneva Act would bring significant progress to the economies of developing countries that increasingly invest in agricultural development, by promoting the protection of appellations of origin and geographical indications. Finally, she declared that her country would strive to finalize and ultimately sign and accede to this treaty that will facilitate the attainment of its development goals.

142. Mr. HALL ALLEN (EU), speaking on behalf of the European Union and its member states, thanked and commended the President of the Conference as well as the Presidents of Main Committees I and II for the tremendous efforts that they and their supporting team from the Secretariat had made, especially the last few days of the Conference. He also thanked the Director General of WIPO for his endeavors upstream the Diplomatic Conference. His Delegation believed that the established working methods during the past two weeks had ensured that work had taken place in an inclusive and transparent manner. Throughout the discussions, no differentiation had been made between Lisbon member States and non-members. He recalled that the European Union was composed of both members and non-members of the Lisbon Union. The European Union and its member states had a significant interest in the revised Agreement and, therefore, particularly appreciated the approach that had been taken. Throughout the lengthy formal and informal negotiating process, every possible effort had been made to accommodate the concerns of all WIPO Member States and countless hours had been spent in different discussion formats in search of possible solutions. In this connection, his Delegation wished to highlight practical examples of flexibility from the side of the European Union in order to accommodate the concerns of a number of Member and Observer Delegations. For instance, regarding the scope of protection to be granted to appellations of origin and geographical indications, his Delegation had not insisted on the inclusion of an explicit reference to “evocation” or to protection of appellations of origin and geographical indications when used as ingredients, although those two concepts featured in the legislation of the European Union. Significant flexibility had also been shown on the issue of compound designations and on the issue of declarations of use, despite the fact that the latter concept was alien of the European Union legislation in the area of geographical indications. On the question of invalidity, the Delegation had agreed to a formulation that could accommodate the views of all parties. Flexibility had also been shown in other areas. Thus, the European Union and its member states had fully explored and exhausted their potential for flexibility. As a result, his Delegation believed that the text represented a best endeavors effort to find common ground among those Delegations that had an interest in protecting appellations of origin and geographical indications.

143. Ms. HAMAMOTO (United States of America) said that her Delegation had not had an opportunity to speak before the President gavelled the decision and wished to underscore that the Delegation of the United States of America did not support the adoption of the Geneva Act of the Lisbon Agreement. Noting that, under the Rules of Procedure, the Conference was the competent body to adopt the New Act, her Delegation did not believe that there had been a consensus among all Conference members in favor of its adoption. She expressed her profound concerns with the Diplomatic Conference and its outcome, the Geneva Act of the Lisbon Agreement. Her Delegation felt that the decision taken before the Conference, i.e., to strip 160 WIPO members of meaningful participation rights, had been a negative undercurrent leading up to and throughout the negotiation. Despite the opportunity and the pleas of WIPO members to do otherwise, the Lisbon members had chosen to elevate their interests over the long-standing WIPO principles of inclusiveness and participation by all WIPO members. As a result, without full participation rights, the Delegation of the United States of America and the great majority of WIPO members had been negotiating at a profound disadvantage throughout the Diplomatic Conference. Consensus was a fundamental principle of multilateralism and Lisbon members’ departure from it formed a precedent that presented broad and alarming implications for WIPO as an institution. Her Delegation questioned the legitimacy of the negotiations and believed that the legitimacy of the outcome of the Diplomatic Conference was in grave doubt. She emphasized that the ends did not justify the means. Although her Delegation had heard from several Lisbon members that the goal of the

Diplomatic Conference had been to improve the Agreement and make it more attractive for a broader array of WIPO members and their stakeholders, she saw instead that the long-term interests of the many, and of the system, had been sacrificed for the short-term and narrow interests of the few. She said that it was hard to understand how the Geneva Act of the Lisbon Agreement would actually advance the stated objectives of the current Lisbon members, when the negotiating process and its outcome had been undertaken with consensus by only 15 per cent of the WIPO membership. Her Delegation did not see how WIPO members with trademark systems would be able to participate in the new Lisbon System, in view of the Delegation's grave concerns regarding critical issues such as the scope of protection, genericness, trademark protection and financial sustainability.

144. She went on to say that her Delegation did not believe that the Diplomatic Conference had achieved a result that would make the Lisbon System financially sustainable. The existing Lisbon System ran at a chronic deficit, despite an obligation for Lisbon members to make contributions to the system, an obligation they had never fulfilled. Her Delegation continued to be highly concerned by the confirmation that the deficit was financed by fee income from the Patent Cooperation Treaty and the Madrid Protocol filing systems. That standing practice, in her view, was particularly perverse given that the fees of patent and trademark applicants under the PCT and Madrid were subsidizing geographical indication beneficiaries and the Lisbon members themselves. All the more troubling was that the overwhelming majority of PCT and Madrid applicants came from WIPO members that had been denied meaningful participation rights in the Diplomatic Conference, and that would be unable to join the Geneva Act because the Lisbon members had refused to make it compatible with trademark systems. In this regard, she wished to emphasize that the WIPO members with the greatest interests in protecting trademark holders and users of generic terms had been given the least ability to meaningfully engage in the negotiations on behalf of these stakeholders. Her Delegation had many questions regarding whether the Geneva Act would perpetuate that objectionable practice and would continue to scrutinize that issue closely. Likewise, it was hard to see how the interests of key stakeholders, including trademark holders and users of generic names, had been adequately safeguarded. Many stakeholders were small producers and small businesses, including those that relied heavily on trademark protection and continued generic use. Like several of the principal Lisbon *demandeurs*, her country also had large producers and businesses. Her Delegation could not lose sight of the reality of the broad array of stakeholder interests impacted by the Geneva Act. Many WIPO members relied on trademark protection and continued generic use to support economic development, job creation, and the production and export of local products. The effort to advance the singular interests of geographical indication holders came at a cost. She wondered what would happen to trademark holders and generic users who had relied on those legitimate uses, some for generations, for their livelihoods and those of their employees; and what would happen when, as a result of the Geneva Act, they could no longer sell and export their goods. Consequently, her Delegation continued to have serious concerns regarding the inadequacy of the safeguards for these producers, particularly in light of the extensive safeguards for geographical indication holders provided for in the Geneva Act. In conclusion, she reiterated her Delegation's disappointment with the process and its outcome, which raised fundamental questions about the legitimacy of the new Geneva Act and serious concerns as to what this precedent would mean for the future of WIPO as a multilateral institution.

145. Mr. BAXTER (Australia) wished to thank the President of the Conference, the Chairs of the Committees, the Officers and the Secretariat for their work during the Conference. However, he also wished to point out that his Delegation did not consider that the Geneva Act

had been adopted by a consensus of the Conference. Issues had remained unresolved on substantive provisions, in particular Articles 11 and 12, which created a barrier to the use of the Lisbon System by countries that relied on trademarks to protect appellations of origin and geographical indications. His Delegation also believed that issues had remained unresolved on the administrative provisions, which created challenges and uncertainties for the future financial sustainability of the Lisbon System. Consequently, the outcome of the Conference was an opportunity lost. WIPO Member States had, up to this Diplomatic Conference, repeatedly chosen for an inclusive and consensus-based approach in respect of the development of international intellectual property law, i.e., an approach that respected the interests and perspectives of all WIPO Member States. This Conference had demonstrated, perhaps, the most important reason for that practice: restricting participation created an insurmountable obstacle to achieving a true and legitimate consensus. His Delegation recognized the attempt by many Lisbon members to be inclusive in the proceedings of the Conference, and appreciated the flexibility of the Chairs of Main Committee I and Main Committee II in conducting business at the Diplomatic Conference in the most inclusive way possible within the constraints of the Rules of Procedure. Within these constraints, the Delegation of Australia, as an Observer Delegation, had also worked constructively to try to create an inclusive Lisbon System that would attract a wider membership. He also recognized that some Lisbon members had made genuine efforts to be flexible. However, no amount of flexibility from some could overcome the constraining basis for the negotiations on the Basic Proposal. The problem was not just one of principle, though. The reality was that Lisbon members, in developing the Geneva Act, had sought to promote only the economic and commercial interests of their own enterprises. Although that was an understandable objective, the end result, i.e., the Geneva Act, would have a substantial detrimental impact on the economic and commercial interests of Australian enterprises. While the Delegation of Australia had worked with Lisbon members throughout the negotiations to protect those interests, as it had been fully entitled to do, the flawed nature of the Conference had made it impossible for his Delegation to protect those interests in the way it would have been able to do, had the Conference followed established WIPO practice. The content of the Geneva Act of the Lisbon Agreement, in its most important aspects, reflected the interests of the Lisbon membership only and did not take into account the interests of the broader WIPO membership. While Lisbon members might not be concerned about the economic impact on non-Lisbon members, the failure of the Geneva Act to reflect the interests of so many WIPO Member States meant that this new treaty would not be able to achieve a truly global membership. A narrow membership would diminish the economic benefits of the new treaty for enterprises of Lisbon members as well. As his Delegation had mentioned in its opening statement, the objectives of preserving the principles of the Lisbon System and expanding its membership had indeed been competing. Lisbon members had chosen to promote the System at the expense of expanded membership. In his Delegation's view, the outcome would inevitably have been different and better representative of the views of WIPO Member States as a whole, if the Lisbon members had granted equal participation rights to all interested WIPO members at the Diplomatic Conference.

146. Mr. FITSCHEN (Germany) wished to join the Delegations that had expressed their appreciation to the President, the Chairmen of the Main Committees and the Director General for the successful conclusion of the work. The Delegation of Germany, which was not a member of the Lisbon System, welcomed with satisfaction the outcome of the Conference. The outcome was good for the Lisbon System, its current and future members as well as for WIPO, because it proved that countries with various systems under WIPO's umbrella could work on a normative text despite differing interests. His Delegation noted with satisfaction

that the procedural concerns that had been raised at the beginning of the Conference ultimately did not prevent the Conference from approving the text that had resulted from the negotiations. While recognizing that some Delegations still seemed to have concerns, his Delegation believed, however, that all Delegations had been given ample time and opportunity to make their voices heard, to make proposals and to have them debated at length. He agreed with the Delegation of the United States of America, though, that the issue of the financing of the Lisbon System had not been fully resolved yet. In conclusion, he underlined that the outcome of the Conference was a clear signal that WIPO as an Organization and its Member States could do what they were supposed to do and expressed the hope that, despite the ongoing differences, the spirit of the past two weeks would give a boost to remaining issues on WIPO's agenda and would help towards more and greater consensus elsewhere.

147. Mr. CASANUEVA (Chile) started by congratulating the President on the conduct of the Conference and his contributions which energized the proceedings of the delegates. From September 2008 in this organization, members of the Agreement and the rest of WIPO members, had worked towards improving procedures planned under the Lisbon System, to make it more attractive for users and possible new members, safeguarding the principles and objectives of the Lisbon Agreement. For his part, Mr. Gurry, in the opening session, had mentioned the changes that had occurred in technology and international trade since the adoption of the Lisbon Agreement, considering the diplomatic Conference as "a major event in the life" of WIPO. The Director General had laid emphasis on "the heavy burden resting on the shoulders of the negotiators". Meanwhile, the President of the Conference had encouraged the full participation of all WIPO members in the discussions, emphasizing the need to achieve a common position, with a view to increasing the number of members under the Lisbon Agreement. He added that his country fully agreed with the objectives that prompted the holding of the Conference and with the views raised by the abovementioned senior representatives. Accordingly, his delegation had previously worked closely and in good faith in the preparation of the content and proposals to be examined during these weeks. Hence, it had also contributed to the proposal of a significant group of members, that the decisions of the conference be effectively open to all members, in accordance with the institutional tradition. It did not appear consistent with that practice, that finally this Conference was conducted with the limited participation of WIPO members who are not party to the Agreement. In this regard, he made it clear that the agreements reflected in the Geneva Act, did not originate from or reflect a consensus of the 188 members of this Organization.

148. His delegation wished to make use of the opportunity to express some views on the outcomes of the Conference. In the first place, he commended the undisputed hard work of the Chairs of Main Committees I and II who geared their efforts towards consensus-building, wherever the circumstances so permitted. With regard to content, his delegation understood that in this Conference, it would be possible to expand the scope of the agreement, in keeping with new economic, commercial and technical realities. In this respect, he regretted the elimination of the agreed statement on homonymous appellations of origin. For his country, its inclusion was a logical and desirable outcome of the Lisbon Agreement revision process. Indeed, the omission of that subject in the Geneva Act was difficult to understand in light of the measures already provided for in the TRIPS Agreement, and of what has become a reality that is increasingly recognized by the business community. On this issue, he believed, like others members who shared this concern, the new Act had come into existence with a major omission which should give food for thought to all members of the Agreement and all members of WIPO. For its part, the Delegation of Chile would closely monitor the administrative process that will follow the holding of the Conference. It should be reflected

in the explanatory notes that homonyms were a recognized reality in the implementation of national legal systems and that they do not constitute a breach of the Agreement. Therefore, he expected the Secretariat to include in the Explanatory Notes of the Conference, a reference that reflected their decision in that respect, as indicated in the the originally proposed amendment as footnote 1 in article 11. In this regard, the Delegation of Chile requested that the Secretariat should confirm during the session that this would, indeed, be reflected. Furthermore, with regard to the final text of article 11(2), he felt that the standard of protection contained in the provision hindered the possible inclusion of new members into the Lisbon Agreement. The above point should be considered, due to possible incompatibilities between the standard of protection established in national laws and the one contained in the revised version of the Lisbon Agreement.

149. Mr. SCHAEELI (Switzerland) endorsed the appreciations expressed to the President, the Chairmen of the Main Committees and WIPO for all their preparatory work and efforts throughout the Conference and for assisting the membership in bringing that undertaking to fruition. His Delegation believed that the negotiating process at the Diplomatic Conference had been organized in an open, transparent and inclusive manner. As Observer Delegation, the Delegation of Switzerland had participated in all Committee meetings, whether formal or informal. Observer Delegations had participated intensively in the negotiating process and contributed to the outcome of the Diplomatic Conference with their proposals. The key goals of the revision process had been the inclusion of geographical indications in addition to appellations of origin in the scope of the Lisbon System and making the system more attractive to WIPO members and intergovernmental organizations, while maintaining its adequate, effective and coherent international protection and taking into account the specific nature of appellations of origin and geographical indications as intellectual property rights. His Delegation was of the view that the Geneva Act reflected those goals and hoped that many WIPO members not yet party to the Lisbon System would analyze the Geneva Act in detail and consider acceding. Switzerland would do so, but hopefully also many developing countries, considering that the Geneva Act provides a specific incentive for international registration of their geographical indications and appellations of origin and that international registration is a prerequisite for taking full advantage of the potential that geographical indication products hold. New members would inject a new dynamic into the Lisbon System and assist Lisbon members in their commitment to the financial sustainability of the Lisbon System, as expressed at this Diplomatic Conference. His Delegation considered this a positive outcome and commended all those involved in and instrumental to that outcome of the Diplomatic Conference.

150. Ms. MORARU (Romania) congratulated the Chair of the Diplomatic Conference, and the chairs of all committees including the Main Committees I and II, for the skillful manner in which they guided the discussions and their relentless efforts to produce a text that was as consensual as possible. She also congratulated the Director general, the International Bureau of WIPO and the interpreters for their excellent work in facilitating the adoption of a new Treaty. Her delegation welcomed the adoption of the Geneva Act of the Lisbon Agreement and expresses its gratitude to all delegations for their flexibility, availability and spirit of compromise demonstrated during the negotiation of this Treaty. She believed that the discussions had been inclusive and transparent and that every effort had been made to produce an instrument that improved the protection system for appellations of origin and geographical indications such that it would attract a larger number of contracting parties. The Delegation of Romania also considered that the new Treaty would have a positive impact on the development of industrial property in general. Lastly, she expressed satisfaction again for the

successful closure of the proceedings of the diplomatic conference and declared that her delegation was ready to sign the Geneva Act and hoped that other delegations would do same in the near future.

151. Mr. THIAM (Mali) stated that the consensual results achieved at the end of the diplomatic conference proceedings were a great source of satisfaction, after several days of profound and enriching technical discussions. These results were all the more convincing because they had reinterpreted the Lisbon Agreement to ensure better promotion of geographical indications, which have been a constant concern of OAPI Member States, including Mali. Indeed, on account of the many possibilities it offered, the Geneva Act and its regulations were a major step that would benefit Member States of the Lisbon Union, and those of WIPO. The protection of geographical indications made it possible to add value to local agricultural products and to diversify international market opportunities for such products. Actions to promote geographical indications in Mali, undertaken by the Malian Center for Industrial Promotion (CEMAPI) would certainly be relevant in today's global economy, especially through the increased openness of markets. The Delegation of Mali thanked and congratulated all delegations and welcomed the efforts made during almost two weeks of proceedings. He congratulated them for contributing to the improvement of their future prospects through their goodwill and patience. He also extended congratulations to the Chair of the conference, for his remarkable conduct of the discussions throughout the conference, and to the seven Vice-Chairs. He renewed his gratitude to the Chairs and respective members of the various committees, and all members of the Drafting Committee for contributing significantly to the success of the proceedings. Lastly, he extended gratitude to the Director general of WIPO and the Secretariat of the conference, for their full commitment to carry out the mandate of WIPO.

152. Ms. KIRIY (Russian Federation) extended her thanks, on behalf of the Delegation of the Russian Federation, to the President of the Diplomatic Conference, his Vice-Presidents, the Presidents and the Vice-Presidents of Main Committees I and II, the Secretariat, and the interpreters for their devoted work during the Conference. She also wished to thank the Director General for the excellent organization and welcome for all participants. Her Delegation welcomed with satisfaction the outcome of the Diplomatic Conference. Despite difficult and long discussions, consensus had been found on important issues. Many of her Delegation's expectations had been met, in particular with regard to the issue of individual fees. Although her Delegation had participated in the work of the Conference as an Observer Delegation, its positions of principle had been understood, heard and taken into account by other Delegations. She thanked the Lisbon Union membership for their constructive spirit. The Geneva Act of the Lisbon Agreement contained several provisions that could be considered as progress in respect of the protection of appellations of origin and geographical indications. The Act no doubt would allow making the Lisbon System more attractive for other countries. A single register of geographical indications and appellations of origin was an important feature of the system. She expressed the hope that the Russian Federation would be able to join it. Finally, her Delegation had a number of drafting remarks to make with regard to the Russian text, which would be sent to the Secretariat shortly.

153. Mr. KIM (Republic of Korea), thanking the President, the Chairmen of the Main Committees and WIPO for their hard work, said that, unfortunately, the Delegation of the Republic of Korea could not fully support the adoption of the Geneva Act of the Lisbon Agreement. As mentioned in its opening statement, the adoption was the result of a closed Diplomatic Conference with no equal participation and decision-making by all WIPO

Member States. Moreover, the Act was not a mere revision, as it introduced a new concept into the Lisbon System, namely that of geographical indications, which was much broader than the concept of the appellations of origin and subject to important differences among countries as to their national legal system for the protection of geographical indications. The Delegation regretted that the Rules of Procedure of the Diplomatic Conference had not permitted equal participation in decision-making. In spite of the efforts of the Observer Delegations, his Delegation believed that genuine inclusiveness had not been obtained during the discussions. Many critical provisions had been decided despite strong opposition from some WIPO Member States.

154. Mr. BARBOZA (Uruguay) stated that the Oriental Republic of Uruguay, as a founding member of the Nations United, had transformed the defence of multilateralism and international cooperation into State policy, considering these to be the ideal approach towards resolving global issues and challenges. He added that unfortunately, they were dealing with a process that had been and will be strongly questioned in its legitimacy, laying a dangerous precedent that would undoubtedly undermine the credibility of the Organization and of the Lisbon Union itself. At the beginning of the Diplomatic Conference, the members of the Lisbon Union, once again chose to ignore the concerns of a large number of WIPO members, taking the policy decision to deviate from the practice followed in this Organization for over 20 years, thus dealing unfairly with no less than 160 WIPO Member States. At the opening session, it was argued that if voting rights were given to observers, they would outnumber Lisbon Union members, thus confirming that members of the Union were thinking of taking decisions, and effectively did so, in a direction that was much different from the one that would have been taken by members of this organization if they had acquired such voting rights. His delegation regretted that they had opted for such a short-term approach, which reflected the vision of a few WIPO members, to the detriment of an inclusive outcome that covered the various systems for protecting appellations of origin and geographical indications. If they had adopted an inclusive approach and exhausted every possible avenue of negotiation, this would have contributed to achievement of the goal, routinely expressed by Lisbon Union members, of having an Act that was modern and attractive enough to draw in new members. He believed that they had lost a great opportunity to provide a global solution to an issue that had been awaiting negotiation for many years here and in other international fora. He regretted even more that within an organization of the United Nations System, priority was given to the interests of the few over those of the majority, ignoring the usual forms and procedures expected in a multilateral negotiation.

155. Mr. SUESCUM (Panama) expressed the deep concern of his delegation about the way the Preparatory Committee of the Conference had recommended to the Conference to adopt the procedures used, and about the decision of Lisbon Agreement members to conduct the Conference in a closed manner. Both actions could have serious systemic repercussions for WIPO, and would not facilitate the already difficult management of the Organization's activities in future. The Preparatory Committee had followed dubious procedures to reach the conclusion of sending the recommendation of the rules of procedure without consensus or vote. This new practice cast doubt on the validity of sending those rules, and he feared that, in an environment like the one currently prevailing in the Organization, where every procedural advantage is taken to capitalize on controversial issues, it could happen in other instances that some members cite the Preparatory Committee as a precedent for pushing decisions that do not have the agreement of other WIPO members. He believed that everyone could think of at least one controversy in the not too distant future, in which some members could find this new practice very tempting. These concerns were compounded by the manner

in which they had wanted to approve the final Act of the Conference. Equally disturbing was the fact that the members of the Lisbon Agreement decided to hold a closed and non-inclusive Diplomatic Conference in violation of over two decades of the Organization's routine practice. A minuscule number of WIPO members (less than 15%) had taken decisions on new international legal issues that would have major implications for the economies of all WIPO Member States and the finances of WIPO. It would also have consequences on both developed and developing countries, and collateral effects on most countries that have trade agreements with Lisbon Union members. The over 20 years old practice of holding open diplomatic conferences and finding real consensus and inclusiveness, was a practice based on the recognition that WIPO was a multilateral and not a plurilateral forum, and that only this manner of proceeding would yield results to which all its members feel committed and which they support or feel called upon to join the Agreement. At the Conference, 85% of the membership had had no significant say in a topic of interest for all, yet they and the International Bureau would be called upon to support very controversial outcomes. He was not sure that the Lisbon Agreement members understood the deep implications that this new practice could create within the Organization. He concluded by congratulating observer delegations for their constructive engagement during the session, and the Secretariat and the interpreters for their hard work.

156. Ms. RODRÍGUEZ (Argentina) expressed deep disappointment with the outcomes of the Diplomatic Conference, concluding that the process was characterized by the lack of inclusion of the majority of WIPO members. Contrary to the practice observed over the last 25 years and Recommendation 15 of the Development Agenda for the development, they had opted for a closed Diplomatic Conference diplomatic, thus limiting the participation of WIPO members who were not parties to the Lisbon Agreement. Although the observer delegations had had the opportunity to present their views, the outcomes of this Diplomatic Conference did not arise from the consensus of all WIPO members as would have been necessary, given the importance of geographical indications, the diversity of national systems and the effects that the new agreement would have on all members of the Organization. Consequently, it would be difficult to achieve the goal of attracting new members to the Lisbon System. She also expressed the concern of her delegation on various issues relating to the financial sustainability of the Lisbon System which had not been addressed with adequate determination and realism to correct the structural shortcomings of the System. In conclusion, her delegation believed that they had lost an opportunity to modernize the Lisbon System such that it has a global scope and is financially balanced.

157. Ms. EL OUARDI (Morocco) congratulated the three Chairs on the excellent work done during the diplomatic conference. She also congratulated the Director general, the Secretariat and the interpreters, who spared no effort to ensure that the conference be held under good conditions. The Delegation of Morocco expressed its satisfaction with the revised text of the Lisbon Agreement, which it considered to be a good compromise between the various positions expressed. Her delegation considered that this new text was consistent with the objectives it outlined in its opening statement, namely to guarantee rights previously acquired in good faith and take into account the specificities of national systems for the protection of geographical indications, including those of developing countries. She stated that the work done would undoubtedly have a positive impact the social and solidarity economy, especially in the agricultural and handicraft sectors. Lastly, the Delegation of the Morocco, having supported the convening of the diplomatic conference, was satisfied with its decision, given the work done and the result obtained.

158. Mr. WU (China) welcomed with satisfaction the adoption of the Geneva Act, which had been possible thanks to the joint efforts of the President of the Conference, the Chairmen of the Main Committees and all Delegations as well as the excellent preparation by the WIPO Secretariat. The Chinese Government had put high emphasis on geographical indication protection in participating in the Diplomatic Conference. Consequently, his Delegation had actively participated in the formal and informal sessions, stating its viewpoints on different provisions and discussing the draft text with other Delegations. Although there were some provisions that did not correspond to his country's national legal system, several concerns and opinions expressed by his Delegation had been taken into consideration. Finally, he expressed the hope that many countries would consider acceding to the Geneva Act.

159. Ms. SANI (Niger) thanked and congratulated the Chair for the remarkable way in which he had guided the proceedings of the diplomatic conference. She also extend congratulations to the Working Group, whose quality had given rise to efficient and rich discussions. The delegation of Niger welcomed the outcome of these negotiations, which had made it possible to review all outstanding issues and produce a consensus document. During 10 days of intense discussions, the delegations had made significant contributions and improvements to the basic proposal submitted to them for consideration. This attested to the interest they had in this instrument. The Delegation of Niger greatly appreciated the flexible and open approach that had characterized the proceedings and made it possible to address the concerns of various delegations. Henceforth, States had an international protection and registration system that was easier to use, and which covered both appellations of origin and geographical indications. She recalled that Niger was an agricultural economy and that this instrument, which protected geographical indications in general, would yield several benefits, namely: curbing, if not elimination, of the misuse and illicit use of geographical indications and appellations of origin; the possibility afforded to different groups of producers to protect their well-known agricultural and handicraft products; considerable added value to the agricultural and handicraft products; and the development of economic activities within the communities of origin of these products. The Delegation of Niger hoped that this new instrument would, from its inception, lead to the accession of new members to the Assembly of the Lisbon Union. Her country had undertaken to protect its agricultural and handicraft products through geographical indications. In this regard, a national committee on geographical indications was created within the Ministry of agriculture. Ten agricultural products with a specific qualification linked to their origin had been identified through cooperation with OAPI. Draft specifications had already been prepared for four of these 10 products. These are "Kilichi" dried meat, cheese, Maralis red goat hide and the violet onions of Galmi. The goal is to achieve the protection of these products through geographical indications, within the shortest time possible. Niger would take all steps to sign and ratify this Act. Lastly, she called on WIPO to ensure that small and medium-sized enterprises benefit from technical assistance and appropriate measures through implementation of this Act. Such assistance could be provided in the form of capacity-building for various services and professional associations to ensure optimum use of this important instrument.

160. Mr. KUMOU (Côte d'Ivoire) congratulated the Chair for the skillful conduct of discussions at the diplomatic conference, which had led to satisfactory outcomes and been approved by all delegations. The Delegation of Côte d'Ivoire also congratulated the Director-general and all major players involved in this achievement. The Geneva Act which corrected the shortcomings of the protection mechanism for appellations of origin set up by the Lisbon Agreement was further proof of the vitality of the multilateral normative system. Given the strategic interest of this instrument, Côte d'Ivoire which had many agricultural and handicraft

products whose qualities were based on both the production areas and the know-how acquired by the people over the generations, will spare no effort in acceding to the new system of the Lisbon Agreement established today.

161. Mr. FUSHIMI (JAPAN) wished to thank the Director General and the Secretariat for the work done in preparation of the Diplomatic Conference. He also appreciated the efforts of the President of the Conference and the Chairmen of Main Committees I and II in addressing the concerns of Observer Delegations. However, substantive concerns still remained. He regretted not having had the opportunity to voice them before the adoption of the Geneva Act, due to the constraints set by the Rules of Procedure. Japan, as a WIPO Member State, had the responsibility to protect the interests of the Organization, in addition to its national interests, and also had a responsibility to protect multilateralism in the world of intellectual property. He expressed the hope that Member States would learn lessons from the present exercise and would continue to contribute to the interests of the organization.

162. Mr. VITTORI (oriGIn) expressed his gratitude to the President of the Conference and to the Chairmen of Main Committees I and II for their work, which had led to the adoption of the Geneva Act of the Lisbon Agreement. He extended his gratitude to the WIPO Secretariat for the organization of the Diplomatic Conference, and to all Delegations that had engaged in constructive negotiations, not only during the past two weeks, but also during the meetings of the Working Group on the Development of the Lisbon System. Representing producers of geographical indications from more than 40 countries with different levels of development, oriGIn welcomed with satisfaction the adoption of the Geneva Act. A solid protection for geographical indications and appellations of origin had been guaranteed and would make it easier for producers to protect their rights and to capture the sustainable development potential of geographical indications and appellations of origin. Several flexibilities had been provided, including the possibility for geographical indication holders and beneficiaries to file directly an application, if their national law so permitted; the possibility for Contracting Parties to collect individual fees; the possibility for Contracting Parties to require declarations of intention of use; and other flexibilities that would make the Lisbon System more attractive for countries and intergovernmental organizations. Since its establishment ten years ago, oriGIn had tried to move away the debate on geographical indications from ideological considerations to practical solutions. In this regard, the Geneva Act presented a good compromise for the establishment of a truly international system for the protection of appellations of origin and geographical indications. Therefore, he urged countries to ratify the Act soon.

163. Ms. JOHNSTON (MARQUES) congratulated Member and dele Delegations, the WIPO Secretariat and the Presidents of the Conference and the Main Committees for their hard work and diplomacy. She said that Representatives of MARQUES had participated in the meetings of the Lisbon Working Group since its first session, back in 2009, and that MARQUES had contributed to the deliberations with written and oral interventions. She pointed out that several suggestions from MARQUES and other Observer Organizations over the past six years had found their way into the Basic Proposal as well as Geneva Act.

164. Mr. VANRELL (ASIPI) first of all expressed gratitude for the space given to him over the past six years to participate in this process. He also commended the President of the Conference and the chairs of the Main Committees for the leadership demonstrated during this Conference. He recognized the efforts made by participating delegations during the entire process, and especially during this Conference, to reach a consensus on modernizing

the international treaty to protect what happens *de facto* on the global stage, both in terms of the language and the introduction of new elements aimed at harmonizing the subject matter with that of other international treaties.

165. Ms. SCHERB (HEP) expressed her satisfaction for attending the diplomatic conference to adopt a new Act of the Lisbon Agreement. It was a historic moment and a major step forward for the recognition of geographical indications worldwide. She said that the new instrument was a compromise which did not, however, take account of all their claims. Yet, it was in the very nature of compromises to fall short of meeting 100% of all aspirations. Lastly, she hoped that this new agreement could be widely adopted by a large number of States around the world, making essential adjustments where appropriate.

166. Mr. LOVE (KEI) wished to point out that it was the third time in four years that WIPO had concluded a treaty, highlighting that this had been done in an open way, with texts being publicly available and non-governmental organizations being able to attend the meetings. This showed that it was indeed possible to conduct and conclude negotiations without secrecy and exclusion of the public.

167. The PRESIDENT gave the floor to the Legal Counsel to present Document LI/DC/18, which is the final act of the conference.

168. Mr. KWAKWA (WIPO) said that document LI/DC/18, entitled “Draft Final Act”, specified the adoption of the treaty, its name and the dates and venue of the Diplomatic Conference. The document would be completed with the names of the States and intergovernmental organizations that would sign the final Act the following day. He requested those States and intergovernmental organizations that were not planning to sign the Final Act to inform the Secretariat.

169. The PRESIDENT considered the draft final Act approved and gave the floor to the Chair of the Credentials Committee to provide a final update of this report.

170. Mr. RAMALHEIRA (Portugal) informed the Conference that the Credentials Committee had received and found in order the full powers of the Delegation of France.

171. Mr. KIM (Republic of Korea) requested clarification as to whether there was a different signing procedure for Member Delegations and Observer Delegations.

172. In response to the Delegation of the Republic of Korea, the President said that the final document of the Conference was open for signature by all duly accredited Conference participants. He added a clarification relating to approval of Document LI/DC/16, stating that Agreed Statements 1 and 2 also formed part of the record of this Conference.

173. Mr. GURRY (Director General of WIPO) wished to join Delegations in thanking the various bodies and persons. Being aware that there had been significant differences in approach on procedure and substance, he wished to thank, in the first place, all Delegations of all WIPO Member States for their very constructive engagement in the Conference. Openness to discuss these differences, a very good participation and a very positive spirit had enabled that environment to occur and take place. He further expressed his appreciation to the President of the Conference, Ambassador Luis Enrique Chávez Basagoitia, for his wise guidance and leadership throughout the Conference. He also thanked the President of Main

Committee I, Mr. Mihály Zoltán Ficsor, and the President of Main Committee II, Mr. Vladimir Yossifov, for their remarkable efforts and leadership in bringing all to a result and in conducting a very inclusive process. He also thanked the Presidents of the Credentials Committee and the Drafting Committee as well as all other officers and bureaus of the Conference and the various Committees. Equally, he wished to extend his thanks to the staff of WIPO, in particular Ms. Wang Binying, Deputy Director General, who had led the revision exercise over the past seven years; under her guidance, Mr. Marcus Höpperger and his team for their able and hard work; and the Legal Counsel, Mr. Edward Kwakwa and his team for their assistance throughout this process. He also mentioned the Conference Services and Mr. Ambi Sundaram, the Assistant Director General in charge of that area; the Director of the Conference and Language Department, Mr. Pushendra Rai, and the translators who had done an extraordinary job and worked like everyone else under extraordinary pressure and under unusual hours; and, finally, the interpreters for their availability and for the excellent work which they had accomplished.

174. The PRESIDENT endorsed the thanks expressed by the Director General.

175. Mr. CASANUEVA (Chile) reiterated his concrete request made that afternoon and invited the Secretariat to react to this point.

176. Mr. HÖPPERGER (WIPO), in reply to the question from the Delegation of Chile with regard to footnote 1 to Article 11, as contained in the Basic Proposal, said that this footnote had been deleted in the course of the negotiations in Main Committee I on the understanding that its content would be reflected in the Explanatory Notes and thus from part of the Conference documentation. He confirmed that the Explanatory Notes to the Basic Proposal would be updated in light of the text of the Geneva Act and published as part of the Records of the Diplomatic Conference, thus providing a basis for interpretation of the Act.

177. Mr. SCHMIDLIN (Italy) said that his Delegation wished to add to the names of persons to whom appreciation had been expressed, Mr. Matthijs Geuze, who has been the father of the revision of the Lisbon Agreement since 2009.

178. The PRESIDENT declared the Diplomatic Conference closed.

MAIN COMMITTEE I OF THE DIPLOMATIC CONFERENCE FOR THE
ADOPTION OF A NEW ACT OF THE LISBON AGREEMENT FOR THE PROTECTION
OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION

Chair: Mr. Mihály Zoltán Ficsor (Hungary)

Secretary: Mr. Marcus Höpperger (WIPO)

First Meeting
Tuesday, May 12, 2015
Morning

1. The CHAIR opened the first session of Main Committee I and thanked the Delegations for their support and confidence, stating that he counted on their constructive spirit. He said that he considered it his duty to ensure that the discussions would be conducted in an open, fair, transparent and inclusive manner, seeking consensus on as many issues as possible. Recalling that the Director General of WIPO had underlined in his opening statement that the Conference was both an opportunity and a challenge, he said that, in order to seize the opportunity and cope with the challenge, it was necessary to exercise courage and caution. Courage would be necessary to overcome some of the fixed positions and to find compromise solutions, which should be acceptable to the broadest spectrum of participants to significantly expand the membership of the Lisbon System. Caution would be necessary for preserving the principles and values of the current Lisbon Agreement.

2. The CHAIR explained the mandate of Main Committee I, as defined in Rule 12(1) of the Rules of Procedure, and indicated that Articles 1 to 20 of the Draft New Act, along with the footnotes pertaining to them, fell within the competence of Main Committee I, with the exception of subparagraphs (xvii) to (xxii) of Article 1. He also considered Main Committee I to be competent to deal with all the Rules in the Draft Regulations under the Draft New Act, with the exception of Rule 24. He pointed out that the explanatory notes contained in documents LI/DC/5 and 6 were an important source of information, but were not part of the Basic Proposal and were not intended to be adopted by the Diplomatic Conference. He explained that, in respect of certain provisions, the Basic Proposal contained alternatives designated with the letters A, B, C and so on, which had equal status and would therefore be discussed and considered simultaneously. He also explained that the Basic Proposal contained words within square brackets, which were not regarded as part of the Basic Proposal and required the submission of a proposal for amendment in order to be considered.

3. The CHAIR drew the attention of the Committee to document LI/DC/7, recalling that the Preparatory Committee had set the deadline of February 1, 2015 for all WIPO Member States to submit proposals for amendments to the Basic Proposal on issues that were identified as pending by the Working Group on the Development of the Lisbon System (“the Working Group”). He noted that ten WIPO Member States had submitted proposals, which had been compiled by the Secretariat and forwarded to the Diplomatic Conference in document LI/DC/7, for information only. Therefore, he said that the content of that document

could not be treated in the Diplomatic Conference as formal proposals for amendments to the Basic Proposal, irrespective of whether the proposals had been submitted by Member Delegations or by Observer Delegations. Noting that document LI/DC/7 did not feature on the Agenda, he said that, when considering the Basic Proposal, Main Committee I would use it as an important and highly valuable source of information and Delegations that had submitted proposals would be free to refer to it in the course of the discussions.

4. Recalling that the Working Group had established, at its tenth session, a list of pending issues, the Chair suggested concentrating on those issues. In order to deal with them in the most efficient way, he proposed to group them by their subject matter in four different clusters, as follows:

A. Issues concerning applications and international registration procedures

- (i) implementation aspects of Article 1(xiv);
- (ii) the content of Article 2(2) and Article 5(4) concerning trans-border geographical areas of origin;
- (iii) the entitlement to file an application under Article 5(2);
- (xiv) whether Rule 5(3) should be optional or mandatory;
- (xv) the inclusion of Rule 5(4) permitting a Contracting Party to require a declaration of intention to use in respect of a registered appellation of origin or a registered geographical indication;
- (xvi) promoting transparency under Rule 5(5);

B. Issues concerning provisions related to the scope of protection

- (vii) the various options in respect of Article 11(1)(a) and Article 11(3);
- (viii) the Draft Agreed Statement contained in footnote 1 to Article 11 and provisions relating to the same issue;
- (ix) the content of Article 12 concerning protection against becoming generic;
- (x) the content of Article 13(1) concerning safeguards in respect of prior trademark rights;

C. Issues concerning other provisions related to the legal effect of international registrations

- (xi) the content of Article 16(2) concerning negotiations following a refusal;
- (xii) the content of Article 17 concerning the necessity of a phasing out period;
- (xiii) whether Article 19(1) should establish an exhaustive or a non-exhaustive list of grounds for invalidation;

D. Issues concerning fees and the financing of the Lisbon System

(iv) Article 7(3), Article 8(3), Article 24(3)(vi) and related provisions concerning the possible introduction of maintenance fees;

(v) the possible re-introduction of the provisions of the current Lisbon Agreement dealing with contributions by members of the Lisbon Union;

(vi) Article 7(5) and related provisions concerning the possible introduction of individual fees;

(xvii) the amount of fees in Rule 8(1).

5. With respect to item (v), namely the possible reintroduction of the provisions of the current Lisbon Agreement dealing with contributions by members of the Lisbon Union, the Chair suggested that Main Committee I should consider the possibility to deal only with the principle of reintroducing such provisions in the text of the New Act and leave to Main Committee II the details of such provisions. In that context, he recalled that there was a need to align such provisions with the decisions taken by the Lisbon Union Assembly in 2003.

6. After drawing the attention of Main Committee I to document LI/DC/INF/4, setting out the tentative timetable of the discussions for the Conference, he invited Delegations to make comments on his suggestions concerning the working method and the rules to be applied to it, the structure of the discussions and the timetable.

7. The CHAIR, noting that Main Committee I had agreed with his suggestions, opened the discussion on Cluster A and invited the Secretariat to introduce the provisions relating to it.

CLUSTER A: ISSUES CONCERNING APPLICATIONS AND INTERNATIONAL REGISTRATION PROCEDURES

Item (i): Implementation aspects of Article 1(xiv)

8. The CHAIR observed that, although Article 1(xiv) appeared as clean text in the Basic Proposal, the item had been identified as a pending issue at the last session of the Working Group. Therefore, he wished to check with Main Committee I whether this was still a pending issue and whether there was any reservation about the text in Article 1(xiv).

9. Ms. CHARIKHI (Algeria) questioned the implementation of Article 1(xiv) and considered that the relationship of this provision with the administrative clauses of the Treaty under Main Commission II should be clarified.

10. The CHAIR pointed out that the implementation of this provision touched on the entitlement to file applications and on the Competent Authority of intergovernmental organizations, which fell within the competence of Main Committee I. He noted that other implementation aspects, concerning primarily the administrative provisions of the New Act, would be dealt with by Main Committee II.

Item (ii): The content of Article 2(2) and Article 5(4) concerning trans border geographical areas of origin

11. Mr. HÖPPERGER (WIPO) introduced Articles 2(2) and 5(4).

12. Mr. POLINER (Israel) indicated that his Delegation had submitted a document on February 1, 2015, proposing to amend the Basic Proposal and to state explicitly that applications for trans-border areas could be filed jointly or individually, as it was expressly set forth in explanatory note 5.04 of document LI/DC/5. Requesting that the written submission of Israel of February 1 be deemed as a written submission for amendment of the text in Main Committee I, he explained that the suggestion was to retain the language in brackets in Article 2(2) and to add the words “or a part thereof” after the words “geographical area”. Furthermore, in Article 5(4) the bracketed text should be retained and the words “may act individually with respect to the part of the trans-border geographical area situated in their territory or” should be added immediately after the words “the adjacent Contracting Parties”.

13. The CHAIR, requesting the Delegation of Israel to submit its proposal in writing, said that it would be considered as a formal proposal for amending the provision in question.

14. Ms. CHARIKHI (Algeria) confirmed that her Delegation maintained its position to remove any reference to trans-border geographical areas in Articles 2 (2) and 5(4). She explained that this position stemmed from the ambiguity of these provisions, because it was unclear how they would be applied in practice. Considering the principle that the geographical indications system is territorial and that it is created and established on a national territory, she considered that the extension of geographical indications would raise procedural and jurisdictional issues that are not covered in the Treaty. She wondered how, in practice, an application relating to a product from trans-border geographical areas would be established. Recalling that her Delegation had always expressed reservations about the implementation of these provisions, she reiterated the Delegation’s wished for these references to be deleted.

15. Mr. GONDA (Hungary) said that his Delegation attached great importance to the possibility of submitting joint applications in the case of trans-border geographical areas under Article 2(2) and Article 5(4). He explained that it was crucial to distinguish between homonymous geographical names and names of cross-border areas. In the case of homonyms, there were two or more words coming from different geographical areas, which were spelled or pronounced alike but had different meanings. The situation was different in the case of geographical names that referred to the same geographical unit, such as the same river, mountain, or region, situated in two or even more countries. He explained that, under Article 5(4) of the Basic Proposal, Contracting Parties had two options. The first was that each of them could file an application separately, concerning those goods originating in the part of the trans-border area situated in its own territory. The other option would allow them to act as a single Contracting Party through a designated Competent Authority. He wished to emphasize that the provisions covering applications in the case of a trans-border area were optional and would allow the countries concerned to consider the possibility of submitting joint applications. However, Article 5(4) would in no way exclude the option of filing separate applications by two or more countries in the case of geographical indications or appellations of origin from a trans-border area. For his Delegation, it was of vital importance to introduce these flexible provisions, as they could contribute significantly to make the Lisbon System

more attractive and user-friendly. He concluded by saying that his Delegation wished to delete the square brackets in the last sentence of Article 2(2) and in Article 5(4).

16. Mr. YOSSFIOV (Bulgaria) said that his Delegation supported the position expressed by the Delegation of Hungary.

17. The CHAIR acknowledged that the proposal put forward by the Delegation of Hungary was seconded by the Delegation of Bulgaria.

18. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) suggested to delete the third line of Article 5(4), which read “Contracting Parties may agree to act as a single Contracting Party of origin by filing an application jointly” and to add instead the words “to file an application jointly”.

19. The CHAIR noted the proposal made by the Delegation of Iran (Islamic Republic of) and said that it would be useful to have it in writing in order to distribute it to the members of the Committee.

20. Ms. VIEIRA LOPES (Portugal) said that her Delegation believed that the provisions on trans-border geographical areas in Articles 2(2) and 5(4) would bring greater flexibility to the Agreement. These were optional provisions, which would give the freedom to Member States to file joint applications through a common authority, or individual applications. Considering that this enhanced flexibility would make the system more user-friendly, her Delegation supported the text within square brackets in Articles 2 and 5.

21. Mr. LONDOÑO FERNANDEZ (Colombia) repeated the comments made in February on Article 2(2) and the Article 5(4) that although he found the regulation on the possibility of joint applications by parties that share a trans-border area to be very appropriate, it remained unclear whether there was a possibility for such application to be filed by associations of beneficiaries or legal entities based in the trans-border areas. The same comment applied to cases where some beneficiaries belonged to a contracting country and others did not. The delegate wondered how the trans-border area would be delimited in that case, considering the arguments presented by the Delegation of Hungary to differentiate between names of trans-border areas and homonymous appellations of origin. In summary, he was raising this concern and the possibility for this situation to also be resolved under Rule 15 in terms of modification of the geographical area, in the event that beneficiaries of a non-contracting party subsequently became beneficiaries of a contracting party.

22. The CHAIR said that the comments made by the Delegation of Colombia would be treated as a formal proposal for amending the Basic Proposal, subject, however, to a Member Delegation taking up the suggestion and making it its own. Otherwise, the proposal would be considered as a suggestion from an Observer Delegation and would not be treated formally as a proposal for amendment.

23. Ms. COTTON (United States of America) said that her Delegation was disappointed to hear that the February 1 submissions were to be regarded as mere information and not as proposals, which in turn meant that the detailed and substantive submissions made by the Delegation of the United States of America and by other non-Lisbon members would have to be re-proposed by a Lisbon member. She understood, in other words, that the proposals of her Delegation would only be heard at the Conference by the indulgence of the Chair, which

demonstrated once again that her country was not a full participant, since her Delegation's observations would merely be regarded as information that the Chair and the Lisbon Union could completely ignore. She indicated, however, that such status had not diminished her country's participation in the Working Group sessions and would not diminish its participation at the present Diplomatic Conference. With regard to trans-border issues, she said that, since the United States of America did not have a significant amount of experience in that area, she had questions on how those trans-border issues, in particular the joint applications or the individual applications, might affect the partial refusal practice reflected in Rules 9 and 11. Her Delegation was trying to understand partial refusals and how they would operate in that context. Recalling that in the Madrid context a partial refusal meant that some of the goods or services would not be operative in an extension of protection, she said that in the present context it seemed to mean something entirely different. In particular, a partial refusal in the case of a homonymous geographical indication or of a joint application for a trans-border area would not make sense to her, and she was of the view that a partial grant would be preferable. She therefore requested clarification on how the International Bureau would handle such partial refusals in the case of homonymous or trans-border cases and how Member States would have to reflect those partial refusals. She pointed out that it appeared from the International Register that such partial refusals were presented as total refusals, which might raise concerns for trans-border areas that had not yet applied for protection.

24. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) requested for clarification on the notion of trans-border geographical area.

25. Ms. JOHNSTON (MARQUES), indicating that trans-border geographical indications were an issue of concern in the ASEAN communities, suggested that Articles 2(2) and 5(4) be retained if the purpose of the proposed revision was to attract new Member States. She pointed out that MARQUES considered that the word "adjacent" might be redundant and limiting in the case of an application by non-contiguous States, and supported the intervention of the Delegation of Israel with respect to the addition of the words "act individually". She concluded by saying that the Delegation of the United States of America had raised a valid issue with respect to partial refusals.

26. Mr. HÖPPERGER (WIPO) explained that a trans-border area of origin covered the situation where the geographical area of origin, from which the geographical indication or the appellation of origin derived its reputation or its specific qualities, happened to be located in two different States, probably for historical reasons. For example, the Austrian Empire used to comprise many regions and countries, which today had become independent States, which in turn could explain that there were now certain geographical areas with a common name located in different States. In that regard, he referred to the example of the Tokaj area, located in Hungary and in Slovakia. In that example, there was one geographical area in which products were being made and to which geographical indications or appellations of origin were being applied. In such case, there could be an understanding between the authorities of both countries that such geographical area of origin should be dealt with as one; a joint appellation of origin or geographical indication would therefore be created on that ground and international protection for that joint geographical indication or joint appellation of origin would be sought. He said that, although this was a very rare case, there were examples of joint geographical areas of origin. He explained that the situation he had just referred to was different from a situation in which there were areas of production in different countries, which would happen to have the same name. In the latter case, the situation was one of homonymous geographical locations, where the geographical area would not be the

same, but would concern two different geographical areas in two different countries. Reiterating that trans-border geographical areas and homonymous geographical indications were two different things that would have to be dealt with differently, he referred to the intervention made by the Delegation of Hungary to clarify that Articles 2(2) and 5(4) dealt with the situation of trans-border areas of geographical origin. He explained that those provisions had been introduced in order to accommodate a situation where neighboring countries would get together, would recognize the existence of ideal conditions for having a joint geographical indication, and would actually create a joint geographical indication that would be jointly registered under the Lisbon System. In such case, there would be a trans-border geographical area of origin and a single Competent Authority that would be responsible for the administrative dealings with the Lisbon Registry and the International Bureau.

27. Referring to the question raised by the Delegation of the United States of America on how that situation would be dealt with at the level of the International Bureau, in particular in the context of a possible refusal by a Contracting Party, Mr. Höpperger recalled that the International Bureau would be dealing with one international registration derived from two areas of origin extending to two countries, but presented by a single authority. The geographical indication or appellation of origin would be registered as any other geographical indication or appellation of origin and subsequently notified to the Contracting Parties, which would then be in position to refuse the new registration just as any other internationally registered appellation of origin or geographical indication originating from exclusively one Contracting Party. He concluded by recalling that the establishment of such joint geographical indications or appellations of origin would remain entirely optional and the fact that it was foreseen in the New Act did not mean that a given Contracting Party would have to enter into negotiations with neighboring countries simply because the trans-border situation existed.

28. The CHAIR reiterated that the provisions under consideration would be entirely optional and that no Contracting Party would be obliged to agree with another Contracting Party on the establishment of a trans-border geographical area or to act jointly through a commonly designated Competent Authority. He pointed out that the question whether a geographical area was a trans-border geographical area or not was a matter of fact and not a point of law because, although borders were usually fixed through legal means, geography remained a matter of fact.

29. The CHAIR explained that the New Act was not supposed to interfere with the sovereign decisions of Contracting Parties. He said that, although the provision referred to the fact that Contracting Parties could agree to act jointly, the proposed text was silent about the legal form of such an agreement. As regards the reference to a “Commonly designated Competent Authority”, he clarified that it could be the Competent Authority of one of the Contracting Parties concerned, if both Contracting Parties agreed to act through that single Competent Authority, and there would be no requirement to establish a separate, commonly designated authority to that effect.

30. With respect to the concern expressed by the Delegation of Algeria, the CHAIR said that he understood such concern as relating to the fact that the optional application of that provision would require decisions by the Contracting Parties themselves, which would take the form of an inter-State agreement. He understood that Algeria would like to maintain some kind of State control over the filing of a joint application for a trans-border area. In that

regard, he asked whether the concern expressed by the Delegation of Algeria might be accommodated by the deletion of subparagraph (b) of Article 5(4), thereby leaving the option of a joint application covering trans-border areas open only to Contracting Parties and not to the beneficiaries themselves.

31. Turning to the proposal from the Delegation of Israel, the Chair said that, since the provision in question was optional, Contracting Parties would be free to file applications for appellations of origin or geographical indications concerning trans-border geographical areas individually. He acknowledged, however, that the suggestion made by the Delegation of Israel might bring some useful clarification to the issue by making it clear that each of those Contracting Parties would be allowed to file applications individually only in respect of the part of the geographical area fully within their territory.

32. Finally, the CHAIR asked the Delegation of Iran (Islamic Republic of) whether the explanations given had provided greater clarity. He understood that the Delegation of Iran (Islamic Republic of) would like to simplify those provisions by deleting the reference to the fact that the concerned Contracting Parties would act as a single Contracting Party of origin, as well as reference to the common Competent Authority. In that regard, the Chair expressed the view that, for the time being, those were indispensable elements of the provision.

33. Mr. KLINKA (Slovakia) said that his Delegation wished to associate itself with the comments and explanations provided by the Delegation of Hungary, seconded by the Delegations of Bulgaria and Portugal.

34. Ms. CHARIKHI (Algeria) thanked the Delegations and the Secretariat for their explanations which clarified the issues. She confirmed that her Delegation's proposal targeted Article 5(4) but pointed out that this provision was related to Article 2(2) which established the principle that the purpose of the treaty may relate to a trans-border geographical area. Article 5, meanwhile, contained details of a joint application. She specified that her Delegation's concerns revolved around two points. The first related to the principle of accepting that a geographical indication could relate to a product from several territories. Her Delegation expressed some reservations about recognition of this principle because it believed that the system of geographical indications was territorial. The second concern related to implementation of this principle. She wondered what would be the details of agreements signed by neighboring States, who would pay the fees, who would establish the terms of reference or again who would act on behalf of the beneficiaries. She also wondered how the authorities of her State would treat an application for international registration of a product from trans-border geographical areas, since this concept is not recognized in national law. Lastly, the delegate wondered whether her State authorities should refuse such an application or amend national laws to accommodate it.

35. Mr. Thévenod MOTTET (Switzerland) requested clarification from the Secretariat on a geographical indication or an appellation of origin whose trans-border area spanned two countries, of which only one was a member of the Lisbon system. He wondered about the possibilities for beneficiaries from both countries to enforce their rights in relation to the international registration. The delegate also wondered about the consequences of subsequent accession by the country that was not a member of the system at the time of international registration of the geographical indication or appellation of origin.

36. The CHAIR noted that the questions raised by the Delegation of Algeria largely concerned the practical aspects of applying the proposed provisions on joint applications in the case of trans-border geographical areas. He clarified that it would be up to the Contracting Parties concerned to decide who would pay the fees under their underlying agreement and that the commonly designated Competent Authority would act on behalf of the beneficiaries. Regarding the question of how to deal with applications filed jointly by two Contracting Parties through a commonly designated Competent Authority, he indicated that the national Competent Authority in Algeria should deal with such applications as if they had been filed by a single Contracting Party through a single Competent Authority, just like any other international registration based on a simple application. Regarding the comment that geographical indications were territorial by nature, he explained that Algeria would not be obliged to make use of the option of filing a joint application if it was of the view that protection of geographical indications and appellations of origin was linked to the territory of a State.

37. Referring to the question raised by the Delegation of Switzerland as to whether a Contracting Party of Origin could file an application covering not only its own territory in respect of a trans-border area but also the territory of a non-Contracting State, thus allowing the beneficiaries or the producers active in the territory of a non-Contracting Party to benefit from the protection granted under the New Act, the Chair said that such a scenario would not be possible because the proposed wording made it clear that only Contracting Parties would be able to make use of that provision. As regards the question of what would happen in the case of a trans-border area in which one of the States would initially be a non-Contracting Party but would later accede to the New Act, he was of the view that the suggestion put forth by the Delegation of Colombia would be worth looking into. He added that in such a case, there could be a possibility for the old Contracting Party and the new one to reach an agreement to transform the international registration, which originally only covered the territory of the old Contracting Party, into an international registration covering a trans-border area, so that the new Contracting Party would also benefit from that optional provision. He pointed out, however, that the issue was not specifically dealt with in the Basic Proposal and that consideration could be given to including a provision to that effect in the text.

38. Ms. MUJIRI (Georgia) expressed her full support to the proposal made by the Delegation of Hungary according to which the provisions under discussion would be optional.

39. The CHAIR noted that there was a broad - but not unanimous - support for the principle of including optional provisions on the possibility to file a joint application for trans-border geographical areas. However, a number of Delegations had expressed concerns of a principle or practical nature, which, in his view, had to be addressed by the Committee, by adjusting the wording of the provisions appropriately. Recalling that he was not in a position to formally propose amendments to the Basic Proposal, he suggested combining elements from the amendments which had been proposed, so as to try to find a compromise. He believed that the amendments proposed by the Delegation of Israel could be taken on board relatively easily, as they would bring useful clarifications. As to the concern expressed by the Delegation of Iran (Islamic Republic of) related to the terms “Act as a single Contracting Party of Origin” in Article 5(4)(a), he observed that the text could work without that reference. He also believed that deleting subparagraph (b) could accommodate the concern of the Delegation of Algeria. He suggested keeping Article 2(2) with the amendment put forward by the Delegation of Israel, so that the second sentence of Article 2(2) would read: “This does not exclude the application of this Act in respect of a geographical area of origin, as

described in paragraph (1), consisting of a trans-border geographical area or a part thereof, subject to Article 5(4)”. As to Article 5(4)(a), the Chair suggested the following text: “In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may agree to file an application jointly, through a commonly designated Competent Authority”. He added that subparagraph (b) of Article 5(4) could be deleted in order to accommodate the concern raised by the Delegation of Algeria and that, if the changes were accepted, there would be consequential changes to paragraph (3) of Article 5.

40. Referring to the observations made by several Observer Delegations, the CHAIR underlined the fact that there should be a provision governing the accession of a State or an intergovernmental organization to the New Act where there was a trans-border geographical area falling within the territory of the newly acceding State or intergovernmental organization and an existing Contracting Party. In such case, Contracting Parties should agree to modify the international registration accordingly. The Chair proposed to circulate a President Non Paper reflecting the exact wording of all the suggestions.

41. Ms. CHARIKHI (Algeria) accepted the Chair's proposal that a President Non-Paper be circulated.

42. Mr. THÉVENOD-MOTTET (Switzerland) wondered whether, to address the request made by some countries, the non-paper announced by Chair could also consider the possibility of maintaining sub-paragraph (b) of Article 5(4) by introducing under sub-paragraph (b) of Article 5(3) the possibility that the declaration of a Contracting Party permitting beneficiaries located in its territory to file an international application for registration shall exclude a joint application for international registration.

43. The CHAIR, thanking the Delegation of Switzerland for the suggestion, said that he would attempt to include alternative language to that effect.

44. The CHAIR, observing that there were no more comments on this item, moved on to the next pending issues in Cluster A.

Item (iii): The entitlement to file an application under Article 5(2);

Item (xv): The inclusion of Rule 5(4) permitting a Contracting Party to require a declaration of intention to use in respect of a registered appellation of origin or a registered geographical indication

45. The CHAIR turned to Article 5(2), pointing out that, although it did not contain square brackets or alternatives, it had been listed as a pending issue in Non-Paper No. 1 because, during the sessions of the Working Group, some Delegations had raised concerns about the provision's legal and practical implications. He added that Rule 5(4), dealing with the signature of the owner as a formal requirement, should be considered in conjunction with Article 5(2). The Chair then invited the Secretariat to introduce items (iii) and (xv) of Cluster A to Main Committee I.

46. Mr. HÖPPERGER (WIPO) introduced Article 5(2).

47. The CHAIR, pointing out that document LI/DC/7 contained comments, suggestions and proposals with respect to Article 5(2) and Rule 5(4), opened the floor for comments on these issues.

48. Ms. FOUKS (France) said that, at this point, Article 5(2) required no amendment. She added that her Delegation requested the deletion of Rule 5 (4), which provides for the signature of the owner of the appellation of origin or a declaration of intention to use, because it was inconsistent with the desire to harmonize the application process.

49. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) believed that the explanations regarding Article 5(2)(ii) created some difficulties and ambiguities for the authorities of every State. Taking into account the different rules and procedures applying in every State, his Delegation suggested replacing the terms of the provision after “a legal entity which has legal standing” these terms by “a legal entity which has legal standing in accordance with national law”.

50. The CHAIR explained that the words “legal standing” should be followed by a verb. Therefore, he suggested keeping the text of Article 5(2)(ii) and leaving out the terms of the provision after “such as”. Moreover, as the applicable law of the Contracting Party of Origin defined whether a legal entity had legal standing or not, he wondered whether an explicit confirmation was needed. In any event, it should be possible to find a proper wording for expressing this idea.

51. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) said that his Delegation agreed with the suggestion of the Chair.

52. Ms. KOPECKÁ (Czech Republic) said that her Delegation wished to keep Article 5(2) as it was. Concerning Rule 5(4), her Delegation shared the position of the Delegation of France and did not support the introduction of the text in square brackets into the Basic Proposal for the Regulations.

53. Mr. POLINER (Israel), referring to Rule 5(4), said that his Delegation, although it understood the utility of harmonization, as expressed by the Delegations of France and the Czech Republic, wished to emphasize the utility of flexibility and making wider appeal. Insofar as the paragraph was optional and would enable some countries to join the Lisbon System, his Delegation lent its support to the inclusion of the text in square brackets in Rule 5(4).

54. Ms. CHARIKHI (Algeria) said that her Delegation wished to amend Article 5(2) in based on the explanations provided by the Chair and by the Delegation of Iran (Islamic Republic of). She considered that the powers of the competent entity differed from one country to another and that ultimately it was up to each national legislation to determine the powers of that entity, as well as the beneficiaries and persons authorized to act on their behalf. She stated that to simplify the text, her Delegation would like to add a reference to national legislation in Article 5(2). Moreover, considering that it was not useful to give examples in a treaty, the delegate proposed that they be deleted in Article 5(2)(ii).

55. The CHAIR suggested that the text refer to the law of the Contracting Party - instead of the national law - since intergovernmental organizations could become parties to the New Act. Article 5(2)(ii) would then read as follows: “A legal entity which has legal standing under the

law of the Contracting Party of Origin to assert the rights of the beneficiaries or other rights in the appellation of origin or the geographical indication”.

56. Mr. SCHMIDLIN (Italy) stated that his Delegation had no problem with the inclusion of the phrase “under the law of the Contracting Party”, but needed time to reflect on the proposed deletion of the examples mentioned in Article 5(2)(ii). He informed the Committee that he would revert to this question at a later stage.

57. Ms. COTTON (United States of America) said that she had noted during the discussions held the previous day that, for many Delegations, the issue was to accommodate trademark systems, as they considered that the Basic Proposal already accommodated geographical indication systems. However, in her Delegation’s view, the issue was not that simple. She pointed out that Article 5(2) raised concerns for geographical indication registration systems as well as for trademark systems. Registrations were issued to a holder, who was given legal standing to bring an enforcement action or to record its registration with customs for border enforcement. If no holder was named in the international registration, there would be no holder in the receiving Contracting Parties. Therefore, refusing to identify the holder meant refusing to accommodate geographical indication registration systems as well as trademark systems. In her Delegation’s opinion, by accommodating only appellation of origin systems, the Basic Proposal did not seem to be very inclusive. For this reason, her Delegation suggested that Article 5(2) identify a holder as the entity named in the protection instrument in the country of origin, as naming a holder was imperative to ensure that the appellation of origin and geographical indication owners got appropriate protection in receiving Contracting Parties.

58. The Delegate also expressed her appreciation for the information provided on Article 1(xvii) by the Delegation of Colombia in its February 1, 2015 submission, according to which beneficiaries should mean natural persons or legal entities having the exclusive right over an appellation of origin or a geographical indication. Considering that this was in lieu of identifying the persons entitled to use the appellation of origin or the geographical indication, she said that she understood the suggestion by the Delegation of Colombia to be in line with the one made by her Delegation with respect to Article 5(2).

59. The Delegate said that she noted with disappointment that Rule 5(4), as elaborated by the Working Group, would not be considered, as its text did not form part of the Basic Proposal. She also expressed disappointment about the inability of her Delegation to rely on the assurances given by the Working Group that its needs would be accommodated, although she appreciated the support of the Delegation of Israel for the flexibility that her Delegation was asking for.

60. The Delegate recalled that her Delegation had offered language in its February 1, 2015 submission, as reflected in document LI/DC/7, concerning two different declarations, namely a declaration of intention to use and a declaration with regard to the entitlement to file and renunciation. She underlined that these two features of the United States trademark system and other trademark systems were designed to combat bad faith applications. If a receiving Contracting Party seriously took the declaration of intention to use as a mechanism to prevent bad faith applications, and to ensure Constitutional authority to regulate speech, it must also have the ability to enforce that declaration when the use requirement was not respected. She added that this also justified inclusion of the renunciation part in the text as well. She concluded by underlying that these two provisions in Rule 5(4) were essential for providing

flexibility for Contracting Parties whose constitutional regulatory authority depended on them. Her Delegation, therefore, hoped that the Committee would consider them.

61. The CHAIR said that, from a procedural point of view, he wished to clarify that the fact that text within square brackets did not form part of the Basic Proposal did not prevent Main Committee I from considering such text in a serious and meaningful manner. He observed that the Committee was considering Rule 5(4), which was included in the President Non Paper No. 1 identifying pending issues. He assured the Delegation of the United States of America that the Committee did listen to it. Recalling that, as Chair, he was in the hands of the Committee, he reiterated that, if support was expressed for suggestions made by the Delegation of the United States of America, those suggestions would be taken up and duly handled in the course of the discussions.

62. Ms. SALAH (Morocco) specified that her Delegation supported maintaining the text of Article 5(2) as such and had no objection to the inclusion of Rule 5(4), so long as it would allow other countries to join the Lisbon system.

63. Ms. MOORE (Australia) raised concerns about Article 5(2), indicating that, in her view, it was important that the provision made clear that the Competent Authority was acting as an intermediary in the filing process for an appropriate legal entity. She also echoed the comments made by the Delegation of Israel on the flexibility provided by Rule 5(4) and expressed the support of her Delegation for its retention and amendment, as suggested by the Delegation of the United States of America.

64. Mr. LONDOÑO FERNÁNDEZ (Colombia) referred to Colombia's proposal on the definition of beneficiaries and indicated that, in his opinion, beneficiaries could be both the holder of a right derived from an appellation of origin, who can exclude those who use it improperly; and persons duly authorized to use the appellation of origin, such as (in the case of certain agricultural products) marketers of already-processed products who are not in the geographical area, do not participate in processing or production, but who, by authorization from the legal entity, the beneficiaries, or the State may affix the appellation of origin or seal on the packaging and, at the same time, be users of the appellation of origin. Therefore, the correct definition, in his opinion, would be "of those who are holders" (and not beneficiaries) of the right derived from an appellation of origin, regardless of whether they are authorized to use it or not.

65. The CHAIR adjourned the meeting.

Second Meeting
Tuesday, May 12, 2015
Afternoon

Article 5(2) and Rule 5(4) (cont'd)

66. The CHAIR resumed the work of Main Committee I on the entitlement to file an application under Article 5(2) and, in conjunction with that Article, the inclusion of Rule 5(4), which would introduce a declaration-based requirement for the owner to sign the application.

67. Mr. SCHMIDLIN (Italy) sought clarification from the Delegation of the United States of America as to the legal implications of signing a declaration of intention to use. He wished to understand the rationale behind the proposal and what such a declaration implied, how it worked and what was required from a company that had filed an application through the Competent Authority, but had not yet entered into the market of a country that had such a requirement. The Delegate pointed out that consideration should be given to the attractiveness of the system, not only for States, but also for users.

68. The CHAIR, indicating that the concern raised by the Delegation of Italy was not related to the subject under discussion, proposed to revert to it later.

69. Ms. FOUKS (France) wished to revisit the issue of signature of the international application and the statement made about it by the Delegation of the USA during the morning session. The delegate recalled that the Delegation of the United States of America had observed that it was important to be able to identify the owner in order to also identify the person empowered to initiate protection actions. To address this issue, the delegate wondered whether it would not be possible to include an expression in the application form that identifies, not an owner, but a kind of signatory. In this regard, the delegate recalled, firstly, that the aim was also to attract all the systems that exist in the field of protection of geographical indications and also that some States had no owners since the State itself was owner. She wondered, therefore, whether it was not possible to find an expression in the application form itself, and not in a specific application, which would imply filing and managing as many applications as there are countries in which protection is requested.

70. The CHAIR pointed out that, in order to include such an element in the application form, a provision to that effect was needed in the Rules. In his view, if the possibility of introducing such a formal requirement was envisaged, consideration should also be given to the definitions of the holder of the international registration and of the beneficiaries. He observed that the definition of “beneficiaries” in the Basic Proposal did not refer to the legal standing to assert the rights in an appellation of origin or a geographical indication, or to the entitlement to enforce those rights in civil law proceedings or border measures, while Article 5(2)(ii) provided for a legal entity which had legal standing to assert the rights in the appellation of origin or geographical indication. In his view, the reference to the owner could be interpreted as a reference to someone who had legal standing to assert the rights, while the reference to the person entitled to use the appellation of origin or geographical indication was covered by beneficiaries. Indicating that the formal requirement of signature of the application by either the owner or the person entitled to use the appellation of origin or

geographical indication could be covered in both cases by Article 5(2), the Chair said that he did not see the need to amend Article 5(2).

71. In reply to a request for clarification from Mr. AZAMI SARDOUEI (Iran, Islamic Republic of), the CHAIR clarified that his previous intervention was an attempt to reconcile the text within brackets of Rule 5(4) with Article 5(2) of the Basic Proposal. The Chair noted that the proposal from the Delegation of the United States of America in document LI/DC/7 was slightly different.

72. Ms. FOUKS (France) clarified that the Delegation of France was not in favor of a signature by the owner or beneficiary of the application. It simply requested that the status of owner or beneficiary be indicated on the application form. The Chair's statements that a legal entity could be owner in some countries seemed to agree with her position.

73. Ms. COTTON (United States of America) said that, as regards Rule 5(4), her Delegation had proposed a declaration-based requirement for the benefit of those countries that required that the application be signed by the owner, such as the United States of America where, if the application was not signed by the owner, the application was void and considered as if it had never happened. With regard to Article 5(2), she said that, generally speaking, identifying the owner of the exclusive right was necessary in registration systems where only the owner had legal standing to assert those rights in a civil action. The declaration option in Rule 5(4) would not necessarily satisfy what her Delegation had asked for in Article 5(2). Her Delegation was not of the view that the signature by the owner would suffice for identifying the owner for the purposes of an enforcement action and disagreed that Rule 5(4) could replace or influence Article 5(2), as the two provisions were dealing with separate things.

74. The CHAIR, expressing the view that Article 5(2) should be neutral and flexible, so as to accommodate the legal systems of all current and future members, said that the approach proposed by the Delegation of United States of America would accommodate the needs of only some of them and might not be an acceptable solution to the current membership.

75. Mr. LONDOÑO FERNANDEZ (Colombia) said that a clear distinction had to be made between the right to file an application established in Article 5(2), and the requirements that must be presented in the application form. Thus, he noted that Article 5(2) was well written, since it defines who can be an applicant for international registration. However, he felt that there was need to reword paragraph (4) of Rule 5 in square brackets and make a distinction between the requirements of the application and the right to file the application.

76. Ms. COTTON (United States of America), recalling that the Lisbon Union had decided to add the subject matter of geographical indications to the agreement and observing that geographical indications were defined in the TRIPS Agreement as private rights, emphasized that private rights had an owner. Her Delegation's suggestion concerned the identification of the owner of the private right because that made enforcement action possible. The Chair had indicated that the current membership might consider this unacceptable because it would change the system. Yet, adding geographical indications had changed the system quite drastically. She wondered whether geographical indications should be added as subject matter if there was no agreement that the owner of a geographical indication as a private right should be identified.

77. Mr. VITTORI (oriGIn) noted that two conflicting visions were clashing, namely that of jurisdictions that did not provide for the institution of ownership in the field of geographical indications, and of jurisdictions that did. He pointed out that the compromise wording of Article 5(2) tried to reconcile those differences by providing both for the filing of an application by a Competent Authority, without mentioning the beneficiaries of the rights, and for direct filing by the owner. The same pragmatic approach should be taken with regard to Rule 5(4), which should be drafted so as to accommodate jurisdictions which required the identification of the owner and jurisdictions that did not provide for ownership over geographical indications. With regard to the enforcement of rights, he believed that it was important to identify the entity, no matter how it was called, that would be responsible for the enforcement. He urged the participants to find a drafting solution to Rule 5(4), through a process of consensus which would carefully balance the interests of all countries, without imposing a signature of the owner.

78. Mr. HÖPPERGER (WIPO) pointed out that, as the system broadened and opened up, there might be additional requirements needed in the Contracting Parties. He wondered whether a possible way forward for Article 5(2) would be to provide that the international application had to be filed by the Competent Authority and indicate the beneficiaries, as defined in Article 1(xvii) and, in addition, that it could identify the natural or legal person that had legal standing to assert the rights of the beneficiaries. For practical purposes, the provision could accommodate the requirements of Contracting Parties for which it was important to have an indication, not only of who had the right to use the protected appellation of origin or the protected geographical indication, but also of who had the right to assert rights in such an appellation of origin or geographical indication; in other words, who had the right to enforce it. He said that rendering Article 5(2) more neutral would create a bridge to Rule 5(4), which was of an optional nature.

79. The CHAIR proposed to reflect on the suggestion by the Secretariat and urged Delegations to find a solution flexible enough to allow current members of the Lisbon Union to continue to follow their legal traditions while accommodating the specificities and the special needs of jurisdictions where another approach was followed. He believed that this was feasible, as these approaches were not mutually exclusive.

80. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of), thanking the Secretariat for the suggestion, said that in Iran (Islamic Republic of) those rights were, in many cases, not private rights, but belonged to local communities or to the nation. Pointing out that the definition of beneficiaries could differ from one country to another, he proposed to leave the regulation of these issues to the national law of the Contracting Parties.

81. The CHAIR concluded that there was growing support for certain changes to be introduced in the text of Article 5(2), especially in item (ii). He noted that the following suggestions had been made: to delete the examples after the words “such as”; to include a reference to the law of the Contracting Party of Origin to the effect of determining whether a person had legal standing to assert the rights of the beneficiaries or other rights in an appellation of origin or geographical indication, and to replace the reference to “legal entity which has legal standing to assert the rights” by a reference to “natural or legal person which has legal standing to assert the rights”. He noted, however, that some Observer Delegations had expressed the view that these changes were not sufficient to meet their specific concerns. With regard to Rule 5(4) and the requirement that the application be signed by the owner or the one entitled to use the appellation of origin or the geographical indication, he pointed out

that conflicting views had been expressed on whether the requirement of signature should be replaced by an indication of the owner or of the person entitled to use the appellation of origin or the geographical indication. However, he noted a growing amount of flexibility in that regard and a willingness to find a solution.

Item (xiv): whether Rule 5(3) should be optional or mandatory

82. The CHAIR opened the discussion on whether Rule 5(3) should be optional or mandatory.

83. Mr. HÖPPERGER (WIPO) introduced Rule 5(3).

84. The CHAIR said that, in his view, Alternative B closely followed the current approach of the Lisbon System. Alternative C would allow Contracting Parties that attached particular importance to the link between the goods and their geographical area of origin to impose this requirement in respect of their own territories, while other Contracting Parties could accept the legal effects of an international registration without requiring information on the link between the goods and their geographical area of origin.

85. Mr. LONDOÑO FERNANDEZ (Colombia) referred to Colombia's comments and proposals of February 2015, which requested that information unrelated to the claim for protection and pertaining to certain specified elements, as well as information on the link should be mandatory, since this entails recording in the international public register the reasons given by each of the countries of origin for protecting the geographical indication and for determining the scope of protection of the geographical indication in its country of origin. Besides, he recalled his Delegation's satisfaction with item (iii) in Alternative B, which states that the application should contain "a copy in the original language of the registration, the legislative or administrative act, or the judicial or administrative decision, by virtue of which protection is granted" since the idea is to ensure that third parties in other countries are aware of the scope of the protection defined for the geographical indication in its country of origin.

86. Ms. OBANDO (Costa Rica) felt that it would be more convenient to request for the information but not make it mandatory.

87. Mr. KLING (Israel), expressing his Delegation's support for Alternative A, said that such a requirement would give the system more clarity and more value to the right. However, in the spirit of flexibility and for the sake of consensus, he declared that Alternative C would also be acceptable.

88. Ms. SÁNCHEZ TORRES (Cuba) supported Alternative C.

89. Ms. FOUKS (France) said that the Delegation of France supported Alternative A, for reasons of clarity of information. She added that Alternative C seemed delicate to implement because it would lead to the preparation of registration forms that are tailored to the request of each country and consequently content that differs from country to country. Hence, Alternative C would not facilitate the registration process and would run counter to the simplification sought by the system.

90. Mr. GONDA (Hungary), expressing his Delegation's preference for Alternative C, was of the view that this alternative would increase the level of flexibility of the system and would also attract new members, as it accommodated their needs.

91. Mr. YOSSFIOV (Bulgaria), aligning himself with the Delegation of Israel, expressed his support for Alternative A, as first option, and Alternative C, as a compromise solution. The Delegate believed that Alternative C would create a two-level system, where some members might require the indication of particulars concerning the quality, reputation or characteristics, while others might not. He concurred with the view expressed by the Delegation of France that more information on registrations would benefit the system.

92. Ms. VIEIRA LOPES (Portugal), considering that the information about the quality, reputation or characteristics of the goods was an essential feature of the system, expressed her preference for Alternative A. She noted, however, that her Delegation could consider Alternative C as a compromise solution.

93. Mr. KLINKA (Slovakia) expressed his Delegation's preference for Alternative A, but agreed that, in a spirit of flexibility, Alternative C would be acceptable.

94. Mr. SCHMIDLIN (Italy) said that his Delegation opted for Alternative A, but was ready to consider Alternative C, if needed.

95. Mr. RENDÓN ALGARA (Mexico) said that his Delegation considered Alternative C acceptable.

96. Ms. DIAZ MORENO (Nicaragua) said that his Delegation was in favor of Alternative C since having more information on an application facilitated its examination and was useful for the purposes of presenting a challenge.

97. Mr. GAOUAOUI (Algeria) expressed Algeria's preference for Alternative C as it gave more flexibility and latitude to contracting parties who would be free to request or not request additional information or data through an application for registration.

98. The CHAIR noted that Alternative B, which reflected the current approach of the Lisbon System, did not have support. Indicating that there was no big practical difference between Alternatives A and C, he said that, if Alternative C were to be chosen, quite a few Contracting Parties would make the declaration under that provision. The practical effect would be that applicants seeking wide geographical coverage for the protection of their appellations of origin or geographical indications would have to provide that information in the application. Otherwise, they would not obtain protection in those countries as a consequence of the by non-compliance with the requirement, as specified in subparagraph (c) of Alternative C.

99. Ms. SALAH (Morocco) expressed her Delegation's preference for Alternative C, which gave more flexibility, was more inclusive, and could encourage countries to join this new Act.

100. Ms. MOORE (Australia) said that, in her Delegation's view, Alternative C would provide a mechanism by which the countries requiring information about the link could alert producers seeking international protection to comply with that requirement in order to obtain protection in their territories. Alternative C would benefit users of the system in that it would

not burden applicants with the requirement to provide information where it was not necessary to obtain the protection.

101. Ms. KIRIY (Russian Federation), expressing her Delegation's preference for Alternative A, said that it corresponded to Russian legislation and was in line with the essence of appellations of origin and geographical indications. At the same time, Alternative C seemed to be flexible and accommodate all national legislations.

102. Ms. MORARU (Romania) indicated that her Delegation preferred Alternative A, but that for reasons of flexibility, it was also ready to go along with Alternative C.

103. Mr. THÉVENOD-MOTTET (Switzerland) wondered why the content of the application for registration had to be mandatory henceforth, whereas under the principles of the current Lisbon Agreement it is optional. He shared the Chair's understanding of the similarity of the de facto consequences of Alternatives A and C and wondered about the validity of Alternative C being a real alternative to Alternative A. He also shared the analysis presented by the Delegation of France on the reasons for refusing Alternative C. On the merits, his Delegation supported Alternative B and supported the analysis presented by the Delegation of Costa Rica. It highlighted one important element namely the burden of translating these elements, which would be mandatory in one way or another, into the working languages of a significant number of countries. He feared that making it somehow mandatory to provide these elements might lead to competition among the applicants, in terms of the variety and exhaustiveness of the information presented to convince the various contracting parties of the validity of such information. This could affect the legitimacy of granting protection to the geographical indication or appellation of origin concerned on their territories. In conclusion, the Swiss Delegation preferred Alternative B and the optional nature of the content of the application.

104. Mr. VITTORI (oriGIn) said that the link of the quality, reputation or other characteristic of the goods was at the core of geographical indications and appellations of origin. OriGIn concurred with the views of the Chair on Alternatives A and C, but invited the participants to look at that requirement not as an obligation, but rather as an opportunity to get recognition in a foreign jurisdiction. Indicating the aforementioned particulars would increase the chances of obtaining recognition and protection in the other Member states of the Union.

105. Ms. GÜNZEL (MARQUES) aligned herself with the Delegations that had expressed their support for Alternative A. The specification was an essential feature of geographical indications, without which the scope of the geographical indication would be unclear. Therefore, for the sake of legal certainty, the particulars should be mandatory. However, for flexibility reasons, Alternative C could also be considered, particularly since the practical differences between the two alternatives were not so big.

106. The CHAIR said that two views had emerged from the discussion. The first was that the purpose of the requirement was to enhance the chances of obtaining protection in Contracting Parties other than the Contracting Party of Origin by increasing the convincing power of the application through including information on the link between the geographical area and the product. The second view was linked to the fundamental reasons justifying the protection of geographical indications and appellations of origin, including the argument that the public should be informed of the elements that proved that there was a link between the geographical area and the product. The Chair noted that many Delegations had expressed

their preference for Alternative A, but were ready to consider Alternative C as a compromise solution.

107. Ms. FOUKS (France) said that her Delegation wished to reiterate its rejection of Alternative C.

108. The CHAIR noted that one Delegation reserved its position on this issue and opposed Alternative C.

109. Mr. CURCHOD (CEIPI) acknowledged that he could not understand the analysis of the Delegations of France and Switzerland on the complexity that would result from the practical application of Alternative C. He construed this alternative as giving the applicant the choice between two options, namely: to provide or not provide all the information referred to in subparagraph (a). However, as he understood it, the applicant did not need to provide data that changed with the country where he is seeking protection. He indicated that although CEIPI preferred Alternative A, he could not understand why Alternative C would not be acceptable in principle.

110. The CHAIR said that he concurred with the reading of Alternative C, as presented by the Representative of CEIPI.

Item (xvi): the Inclusion of Rule 5(4) permitting a Contracting Party to require a declaration of intention to use in respect of a registered appellation of origin or a registered geographical indication

111. The CHAIR opened the discussion on Rule 5(4).

112. Mr. HÖPPERGER (WIPO) introduced Rule 5(4).

113. Ms. COTTON (United States of America), in reply to the question raised previously by the Delegation of Italy concerning the declaration of intention to use, said that the United States Constitution gave authority to the Federal Government to issue patents and recognize copyright, but did not give explicitly authority to register trademarks at the federal level. Therefore, in order to issue federal registrations that covered all 50 states, the Federal Government relied on the interstate commerce clause of the U.S. Constitution. She explained that it had been held by the U.S. Supreme Court that, for a registration to be valid, a trademark had to be used in commerce. She also explained that, in light of her country's treaty obligations, the trademark system had moved to an "intention to use" system, where an application for a trademark filed through the Paris Convention or the Madrid System had to be accompanied by an intention to use declaration, claiming that the applicant had a bona fide intention to use the mark in commerce. Thus, between the fifth and the sixth year of the registration, the applicant had to use the trademark in commerce and every tenth year, he/she had to show use in commerce. She concluded that intention to use declarations were already required for applicants filing through the Madrid System and the Paris Convention. Such declarations had to include a statement that the person making it believed itself to be entitled to use the mark in commerce, as regards trademarks, or, as regards collective and certification marks, that the person making it was entitled to exercise legitimate control over the use in commerce, and that to the best of his or her knowledge and belief, no other person, firm, corporation, or association had the right to use the mark in commerce, either in the identical form thereof or in such near resemblance to it as to be likely, when used on, or in connection

with, the goods or services of another person, to cause confusion or to cause mistake or to deceive. The declaration had to be signed by either a person with legal authority to bind the applicant, or a person with first-hand knowledge of the facts, and actual or implied authority to act on behalf of the applicant, or an attorney authorized to practice before the United States Patent and Trademark Office who had written or verbal power of attorney or implied power of attorney from the applicant. She stressed that the declaration of intention to use allowed the United States Patent and Trademark Office to issue a federal trademark registration, even though the mark had not yet been in use in commerce. Rule 5(4)(b) gave the option to applicants not to pursue an application in the United States of America or another country that required use, by not submitting the declaration of intention to use, thereby renouncing protection in their territory.

114. Mr. SCHMIDLIN (Italy) asked if the United States law provided for exceptions to trademark use requirements, in particular where a foreign company could not use the trademark for reasons not depending on its owner.

115. Ms. COTTON (United States of America) referred to Article 19.1 of the TRIPS Agreement, which reads as follows: “Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use”. She said that, in the United States of America, that was called “excusable non-use”, and applied to a certification mark, a collective mark and a trademark. Generally, if the non-use was due to a government restriction under the terms of Article 19 of the TRIPS Agreement, that would be accepted as excusable non-use. She concluded by stressing that a declaration of bona fide intention to use the mark meant that there were business plans under way to use the mark in commerce in the United States of America; and not just a desire to do so at some point.

116. The CHAIR pointed out that government restrictions were just an example of an excusable non-use and that all sorts of circumstances arising independently of the will of the trademark owner could be recognized as valid reasons for non-use. He also expressed the view that the text of Rule 5(4) proposed in the submission of February 1 by the Delegation of the United States of America seemed to be more flexible than the one in the Basic Proposal.

Item (xvi): promoting transparency under Rule 5(5)

117. Mr. HÖPPERGER (WIPO) introduced Rule 5(5).

118. Ms. SANCHEZ TORRES (Cuba) said that her Delegation supported Alternative A of Rule 5(5) because it offered greater transparency and legal certainty to the system.

119. Mr. MELENDEZ GARCIA (Costa Rica) considered that Alternative A offered greater transparency and helped to make the instrument more attractive. It also provided better information to consumers and prevented problems in national procedures, where it is sometimes difficult to clearly establish the scope of protection.

120. Mr. YOSSIFOV (Bulgaria) expressed his Delegation’s support for Alternative A.

121. Mr. SCHMIDLIN (Italy), considering that the formulation of Alternative A was rigid, expressed his Delegation’s preference for Alternative B.

122. Mr. KLING (Israel) expressed his Delegation's support for Alternative A
123. Ms. VIEIRA LOPES (Portugal), aligning herself with the statement made by the Delegation of Italy, expressed her Delegation's support for Alternative B.
124. Ms. KOPECKÁ (Czech Republic), aligning herself with the statements made by the Delegations of Italy and Portugal, expressed her Delegation's support for Alternative B.
125. Ms. FOUKS (France) indicated her Delegation's preference for Alternative B.
126. Mr. KLINKA (Slovakia) said that his Delegation preferred Alternative B.
127. Mr. GAOUAOUI (Algeria) said that his Delegation shared the positions that supported Alternative B for reasons of flexibility.
128. Ms. DIAZ MORENO (Nicaragua) said that her Delegation supported Alternative A.
129. Mr. LONDOÑO FERNANDEZ (Colombia) underscored the importance of defining the scope of protection for all appellations of origin and geographical indications composed of two terms and called for reflection on the need to approve Alternative A for both Rule 5(5) and Rule 5(3).
130. Ms. COTTON (United States of America) aligned herself with the statements made by the Delegations of Colombia, Costa Rica, Cuba, Israel and Nicaragua in support of Alternative A. Pointing out that many countries did not provide for the protection of generic elements of a compound geographical indication, she said that many appellations of origin and geographical indications coming through the system contained multiple terms, most of which were unfamiliar to foreign examiners and foreign courts. It was, thus, difficult to know what was being claimed and what was not being claimed. Her Delegation was, therefore, of the view that, if there was a statement in the instrument of protection in the country of origin that specifically identified a generic term in a compound geographical indication as not enjoying exclusive rights apart from the geographical indication as a whole, that information should be conveyed in the international application, so that the Contracting Parties would have more information to evaluate the incoming notification. This was necessary to avoid the situation where an appellation of origin or a geographical indication notified through the system would enjoy more protection in the receiving Contracting Parties than it actually had in its country of origin.
131. Ms. SALAH (Morocco) aligned herself with the Delegations that spoke in favor of Alternative A because it was more transparent.
132. Mr. THÉVENOD-MOTTET (Switzerland) expressed his preference for Alternative A for the same reasons outlined by the Delegations that spoke in favor of this option. He specified that Alternative A was better formulated than Alternative B, since it referred to an element of protection instrument itself, which in one way or another is noteworthy. In this context, he did not understand the possible relevance of concealing, as in Alternative B, information contained in the instrument protecting the geographical indication or appellation of origin. As other Delegations had pointed out, and in the interest of greater transparency, it was difficult to understand that any prejudice would arise from the obligation to indicate a factual element, determined by the country of origin in its instrument recognizing the

geographical indication or appellation of origin. As regards Alternative B, he noted that its wording made no reference to the protection instrument specifying or failing to specify that protection is not granted to certain elements of the appellation of origin or geographical indication, whereas it is indicated in the application for international registration that protection would not cover some items. In this context, he wondered how the Alternative B could be implemented.

133. Ms. MORARU (Romania) declared that her Delegation supported previous speakers who were in favor of Alternative A for the above-mentioned reasons of transparency.

134. Ms. SCHULTE (INTA), expressing INTA's support for Alternative A as an element of transparency and legal certainty, said that this alternative would help to determine the appropriate scope of protection for the registered terms and to avoid undue limitations to the freedom to use descriptive terms.

135. Mr. THORN (CCFN), expressing CCFN's strong support for Alternative A, said that this option would increase the legal clarity and ensure that geographical indication registrations were not unnecessarily trade distorting. He added that, for decades, producers represented by CCFN had produced and marketed foods using common food names, which were often components of registered geographical indications.

136. Mr. MEDINA (MARQUES), aligning MARQUES with the statements made by the previous Delegations that had expressed their support for Alternative A, believed that that option was the best in terms of legal certainty, consumer protection and free competition. He considered that the lack of information on non-protected elements of appellations of origin and geographical indications could lead to the protection of those elements in other Contracting Parties, which ultimately could distort the system.

137. The CHAIR, recalling that Alternative B would correspond to the current approach in the Regulations under the Lisbon Agreement, concluded that some Member Delegations and many Observer Delegations had opted for Alternative A. He noted that some Delegations had expressed their concern on the current drafting of Alternative A, while other Delegations had expressed their concern on the functioning in practice of that alternative. He said that, in his view, Alternative A could function in practice by means of a box to be ticked in the application form when there were elements for which protection was not being claimed, followed by the indication of those elements. He proposed to revert to this provision at a later stage.

138. The CHAIR adjourned the meeting.

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139. The CHAIR summarized the discussions that had taken place the day before and informed that, in an attempt to reach compromise solutions, he had produced President Non-Paper No. 2, on trans-border geographical areas of origin, and President Non-Paper No. 3, on the entitlement to file an application under Article 5(2) and the relevant part of Rule 5(4). He also said that a formal proposal for amendment concerning trans-border geographical areas of origin had been tabled by the Delegation of Iran (Islamic Republic of). This proposal was available for consideration by the Committee as document LI/DC/11.

140. Mr. WU (China), referring to Rule 5(3), expressed his Delegation's preference for Alternative C. He also expressed his Delegation's agreement with the current text of Rule 5(4) and its preference for Alternative A of Rule 5(5). Finally, his Delegation could not agree with a reference to "natural persons" in Article 5, because its national law did not foresee this possibility.

141. Ms. CHARIKHI (Algeria) asked whether Main Committee I would revisit Chair Non-Papers Nos. 2 and 3.

142. The CHAIR reiterated his intention to go through the entire list of pending issues identified in President Non-Paper No. 1. He said that, after having heard the positions of Delegations, the Committee would revert to the pending issues, basing its discussion either on the Non-Papers presented by the Chair or on any proposals for amendment presented by Member Delegations.

CLUSTER B: ISSUES CONCERNING PROVISIONS RELATED TO THE SCOPE OF PROTECTION

Item (vii): the various options in respect of Article 11(1)(a) and Article 11(3)

143. The CHAIR opened the discussion on Article 11(1)(a) and Article 11(3).

144. Mr. HÖPPERGER (WIPO) introduced Article 11(1)(a), which contained two alternatives, and Article 11(3), which contained four alternatives.

145. The CHAIR pointed out that, if Alternative B prevailed for Article 11(1)(a)(ii), there would be no need for Article 11(3), except for Alternative D.

146. Ms. FOUKS (France) noted that Main Committee I had entered the heart of the debate. Protection was a major issue. She recalled that the objective was to modernize the Lisbon Agreement and improve the rules of protection. In this context, the Agreement was not very clear on the treatment of certain situations involving appellations of origin and geographical indications in cases counterfeit or usurpation. She indicated that her Delegation supported Alternative A of Article 11(1)(a) which made it possible to cover more situations involving protection.

147. Mr. SCHMIDLIN (Italy) expressed his Delegation's support for Alternative A in Article 11(1)(a).

148. Ms. KOPECKÁ (Czech Republic) said that her Delegation preferred Alternative A in Article 11(1)(a), because it was closer to the traditional concept of the content of protection, as well as Alternative A in Article 11(3).

149. Ms. VIEIRA LOPES (Portugal) stated that her Delegation preferred Alternative A for Article 11(1)(a).

150. Ms. CHARIKHI (Algérie) said that her Delegation joined the Delegations of France, Italy, Czech Republic and Portugal in preferring Alternative A. Her Delegation held the view that this alternative offered the most significant protection to products benefitting from an appellation of origin or geographical indication.

151. Mr. POLINER (Israel) said that his Delegation could go along with Alternative A in Article 11(1)(a), but preferred Alternative B because it reflected a TRIPS standard, even though in the TRIPS Agreement this standard only applied in respect of well-known trademarks. Moreover, Alternative B gave greater flexibility for potential Contracting Parties, on the understanding that individual Contracting Parties could set higher standards in their national laws if they so desired. He added that his Delegation supported footnote 2, which was part of Article 11(1)(a). With regard to Article 11(3), he expressed the support of his Delegation for Alternative D, so as to make the New Act more flexible and amenable to a wide number of countries.

152. Mr. MAYAUTE VARGAS (Peru) said that, with regard to Article 11(1)(a), his Delegation also found that Alternative A gave the most comprehensive protection to appellations of origin and geographical indications. Accordingly, it preferred Alternative A of Article 11(1)(a) and Article 11(3).

153. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) said that his Delegation supported Alternative A of Article 11(1)(a) and Alternative C of Article 11(3).

154. Ms. FOUKS (France) considered that Article 11(3) is related to Article 11(1), which was flexible and allowed for consideration of the observations of some States that could not cope with very restrictive protection, especially for non-comparable products. She observed that Article 11(3) had significantly evolved in the course of the discussions to the point of becoming an article of total reservation on the protection conferred by the agreement. The delegate particularly targeted Alternative D that she found dangerous because it challenged protection mechanisms. While reiterating her Delegation's support for Alternative A, she indicated that the discussions would make it possible to hear all Delegations on this article and, if necessary, to reflect on its wording.

155. Mr. OKIO (Congo) was in favor of Alternative A of Article 11(1) which, according to his Delegation, best addressed the objective of modernizing the Agreement, as well as Alternative A of Article 11(3).

156. Mr. KLINKA (Slovakia), indicating that his Delegation considered Article 11 as the core provision of the New Act, expressed his Delegation's preference for Alternatives A in both Article 11(1)(a) and Article 11(3).

157. Ms. CHARIKHI (Algeria) declared that her Delegation was in favor of Alternative C of Article 11(3) which she found to be more exhaustive. However, she proposed the deletion of item (iii) of Alternative C which her Delegation considered redundant. In the alternative, she requested the Secretariat or Delegations to provide explanations that could justify maintenance of point (iii).

158. Mr. SCHMIDLIN (Italy) stated that his Delegation shared the position taken by the Delegation of France regarding Alternative D of Article 11(3).

159. Ms. VIEIRA LOPES (Portugal) stated that her Delegation preferred Alternative A in Article 11(3), although it could perhaps take other alternatives into account.

160. Mr. LONDOÑO FERNANDEZ (Colombia) indicated that the expressions “improper use” in Article 11(1) corresponded to what is described as an improper action in Article 11(1)(i). Furthermore, he indicated that the only two ways of incorrectly using a geographical indication or appellation of origin for the same type of products is when the origin of the product is false or when it fails to meet the requirements of the appellation or trademark standards, in the case of a certification mark. He clarified that this comment applied to the use of appellations of origin, because if it had been about the use of something similar, imitation is already included in Article 11(1)(ii). If sub-paragraph (iii) were included in Alternative A, proof would have to be given that the appellation of origin or certification mark enjoys a reputation before a favorable decision can be rendered. This did not square with the type of protection given to a certification mark or an appellation of origin when dealing with products of the same type. In his view, it sufficed for the appellation of origin or certification mark to have been used incorrectly or to have been mentioned or used in a manner that misled the consumer to believe that he was dealing with the same product protected by the appellation of origin or certification mark. He recalled that, at the last session, the Delegation of Colombia had proposed a clear distinction of conduct between imitation or use of appellations of origin or certification marks for the same type of products and imitation or use for different types of products. Hence the first suggestion of Colombia was that there should be a single article that includes sub-paragraph (i), as well as imitation, and sub-paragraph (iii) should be deleted since it would be redundant. He also said that in the case of products of a different type, the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks could be applied, described in Alternative C, could be applied, such that it would be applicable to both well-known marks and appellations of origin, to the extent that the terms “well-known” and “reputation” are understood to be synonymous. Thus, his Delegation was proposing a careful review of the proposed wording to ensure that Article 11 protects geographical indications and appellations of origin against usage or imitation for the same products and against usage or imitation for products that are not of the same type.

161. Mr. WU (China) expressed the view that Article 11(1) exceeded the protection of appellations of origin and geographical indications under the TRIPS Agreement, as it followed Article 3 of the Lisbon Agreement and Article 23 of the TRIPs Agreement. Therefore, his Delegation could not agree with its formulation. Indicating that his Delegation did not agree with any of the proposed alternatives in Article 11(3), he suggested adding another alternative, which would read as follows: “Any country or intergovernmental organization can declare at the time of its ratification or accession that Article 11(1)(a) does not apply if the relevant legislation with regard to appellations of origin and geographical indications provides that the beneficiaries shall have the legal means to prohibit products that

are not originating from the geographical area or using the geographical indication in a way that misleads the public.”

162. Ms. MORARU (Romania) said that her Delegation supported Alternative A of Article 11(1) and Alternative A of Article 11(3) which they found to be more consistent with the objectives of the new Act.

163. Ms. COTTON (United States of America) said that her Delegation supported Alternative B in Article 11(1)(a) because of the infringement standard that would allow national courts to take into account local consumer protection. She expressed the concerns of her Delegation about Article 11(1)(a)(i) and the legal presumption therein represented for use on the same goods, which was not acceptable without the requirement of reputation in the receiving country as a condition for protection of the geographical indication. She explained that a legal presumption was an evidentiary shortcut where it was presumed that a fact would be true, so that proof of that fact was unnecessary. If there was no local reputation or even local use of a geographical indication, there was no deception and there should not be an obligation to establish a false presumption under national law. For these reasons, she said that her Delegation had submitted in February a proposal for applying Alternative B also to goods of the same kind. However, in the interest of flexibility and having listened to the other Delegations, her Delegation now supported Alternative B as it stood. Indicating that her Delegation supported a uniform standard of protection, she did not support declaration options as presented in Article 11(3).

164. Mr. FUSHIMI (Japan) said that his Delegation preferred Alternative B for Article 11(1)(a). As regards Article 11(3), his Delegation preferred Alternative D, because the scope and level of protection under Article 11 went far beyond the protection under the TRIPS Agreement. Under Article 11, the registration of a trademark, the use of which would amount to evocation of a geographical indication, would be refused, while there was no such provision in the TRIPS Agreement. Since Alternatives B and D of Article 11(3) were similar to Article 16.3 of the TRIPS Agreement, their impact would be low on trademark users and WIPO Member States. Based on this, his Delegation preferred Alternative B or D.

165. Ms. SALAH (Morocco) expressed her Delegation's preference for Alternative A of Article 11(1), which is consistent with its national law, and Alternative C of Article 11(3), which she deemed to be more exhaustive since it explicitly determined the scope of protection.

166. Ms. MOORE (Australia) recalled that her Delegation had previously stated that a more inclusive system would be more likely to encourage increased membership, which could produce significant and beneficial results for stakeholders around the world. She also recalled that her Delegation had proposed Alternative B at the ninth session of the Working Group, so as to provide an inclusive, universal standard consistent with existing international standards and in line with the protection sought by Lisbon members. Stressing the importance of the scope of protection, she reiterated that, for her Delegation, it was preferable to create a general universal standard, well established, well understood and widely acceptable, instead of a standard unfamiliar in many legal systems. She appreciated, however, that there could be adjustments to the text in Alternative B which would achieve the same outcome.

Appreciating the importance of the provision accounting also for goods that were not of the same kind, the Delegate noted that there could be an amendment to Alternative B, to apply in respect of both goods that were similar to, and goods that were different from, those to which the appellations of origin or geographical indications applied, if, because of the reputation of

the appellation of origin or geographical indication in that Contracting Party, such use would indicate or suggest a connection between the goods and the beneficiaries and was likely to damage the interest of the beneficiary. With respect to Article 11(3), which provided an alternative to the protection under Article 11(1)(a), she said that her Delegation preferred not to require this provision because the language of Article 11(1)(a) supported an inclusive standard acceptable to all. She added, however, that her Delegation could also accept Alternative D of Article 11(3).

167. Mr. KIM (Republic of Korea), recalling that his Delegation had previously raised concerns about the level of protection of geographical indications that exceeded the level of protection provided by other international treaties, stated that his Delegation did not support Article 11 and concurred with the views expressed by the Delegation of China. If an identical level of protection applied to different geographical indications, conflicts could arise between foreign geographical indications registered through the Lisbon Agreement and local geographical indications registered by the Member States. Consequently, his Delegation did not support any of the alternatives. However, if he was required to opt for one alternative, he expressed his Delegation's preference for Alternative B of Article 11(1) and Alternative D of Article 11(3).

168. Ms. KOUBITOBO NNOKO (Cameroon) indicated that her Delegation preferred Alternative A of Article 11(1) which provided sufficient protection to geographical indications, but was nevertheless ready to review the terms of Alternative B which was more consistent with its national laws. She added that her Delegation favored Alternative C of Article 11(3) because it clearly defined the scope of protection.

169. Mr. FERREIRA (Chile) said that opting for a level of protection that is higher than the one provided under the TRIPS Agreement would undermine the goal of inclusiveness, because that would imply adopting a protection standard that new members would find hard to accept. Hence, with regard to Article 11(1)(a), his Delegation supported Alternative B, but as regard Article 11(3), it supported Alternative D, because it considered that they would be the only provisions able to offer some consistency with the level of protection provided by the TRIPS Agreement.

170. Ms. SÁNCHEZ TORRES (Cuba) said that her Delegation supported Alternative B of Article 11(1) and Alternative D of Article 11(3) for being more compatible with its national law.

171. Mr. THÉVENOD-MOTTET (Switzerland), indicating that his Delegation had not yet adopted a final position, stated that he favored the positions expressed by the Delegations of the United States of America and Australia for a uniform and acceptable level of protection for the largest number of countries interested in joining the Lisbon system. He added that, to the extent possible, waivers, such as those reflected in the four alternatives of Article 11(3) should be avoided. He also invited Delegations, particularly those of the Member States of the Lisbon Union, to consider the issues raised by the Delegation of Colombia and recalled by other Delegations about the relevance of Alternative C of Article 11(3), which could serve as a basis for compromise to achieve uniform protection.

172. Ms. KIRIY (Russian Federation), considering that there was a lack of clarity in Alternative A in Article 11(1)(a), expressed her Delegation's support for Alternative B in Article 11(1) and Alternative D in Article 11(3).

173. Ms. DIAZ MORENO (Nicaragua) said that her Delegation supported Alternative B of Article 11(1)(a), because it appeared to be most appropriate to reinforcing the protection of geographical indications and appellations of origin, as well as Alternative D of Article 11(3).

174. Mr. MELÉNDEZ GARCÍA (Costa Rica) said that, with regard to Article 11(1), his Delegation supported Alternative B and in the case of Article 11(3), it supported Alternative D.

175. Mr. LONDOÑO FERNÁNDEZ (Colombia) said that his Delegation would have no problem giving geographical indications under the new treaty a higher level of protection than the one established under the TRIPS Agreement, since this is an agreement that establishes a minimum level of protection. After all, in the case of the other intellectual property rights, such as copyrights and patents, there are levels of protection higher than those established under TRIPS, both under national laws and in other multilateral treaties.

176. Ms. SCHERB (HEP) indicated that HEP supported Alternative A of Article 11(1) to improve the protection rules. She wished that all the concerns of aboriginal groups in African countries should be taken into consideration and regretted that Cameroon and other African countries were not yet members of the Lisbon system and that only four OAPI Member States were already members. She noted that traditional knowledge and traditional cultural expressions were pirated and that geographical indications could be used for the development of African countries.

177. Mr. VITTORI (oriGIn), indicating that Article 11 was a pillar for a treaty aiming at protecting geographical indications and appellations of origin, said that he concurred with the views of Delegations having stated that, for the sake of transparency, legal certainty and predictability, it was crucial to find a standard for protection and to limit the possibility for Contracting Parties to depart from that level of protection. For this reason, he felt uncomfortable with respect to Article 11(3), as the declarations would allow Contracting Parties to depart from that standard. Turning to Article 11(1)(a), he expressed oriGIn's preference for Alternative A, as there were infringement practices of geographical indications or appellations of origin that did not use exactly the same name, but evoked or imitated the appellation of origin or geographical indication. However, he regretted that Alternative A had to be considered as an alternative to Alternative B as, in practice, geographical indications and appellations of origin were also infringed with respect of goods not of the same kind. He requested clarification from the Secretariat on what would be the obligation for Contracting Parties in case of misappropriation of appellations of origin or geographical indications with respect to goods not of the same kind, if Alternative A was chosen. He concluded by expressing his support for the points raised by the Delegation of Colombia.

178. Ms. SCHULTE (INTA) raised concerns about the breadth of the scope of protection proposed in Article 11(1), in particular in Alternative A, and the vagueness of several of the concepts contained therein, adding that INTA had also concerns about the language in Article 11(1)(a)(i) and its separation from the other subsections. In her view, as drafted, this provision could be read as an absolute protection in respect of goods of the same kind for any use, although this was not the case under the current Lisbon Agreement. She said that INTA considered that Article 11(1)(a)(i) was too broadly drafted, as it included terms not affecting the legitimate interests of the holders. Consequently, adding other requirements to the conditions for infringement in respect of goods of the same kind would be useful. Although Alternative B would allow for greater inclusiveness than the standard suggested in

Alternative A, she wondered whether the proposed standard of protection, reflecting the standards of protection for well-known marks under Article 16.3 of the TRIPS Agreement, was appropriate for all geographical indications, as this would imply applying the same scope of protection to world famous indications as to those known only in a limited sector. She concluded by saying that INTA welcomed Article 11(3), as it could allow for greater inclusiveness of the system, but raised concerns about the precise wording of Alternative D, which were similar to those related to Alternative B of Article 11(1).

179. Mr. SIRONI (AIPPI) said that Alternative A to Article 11(1) would be more in line with AIPPI's position in favor of the protection of geographical indications against any act of misappropriation of the reputation. As regards Article 11(3), he said that, although AIPPI was in favor of Alternative A, Alternative C would also be acceptable.

180. The CHAIR observed that, although there seemed to be a divide between Delegations concerning the two alternatives under Article 11(1)(a), that divide was not necessarily between Member Delegations and Observer Delegations. He also noted that the positions expressed contained some new elements, such as the wish to lay down a uniform standard instead of including a declaration based provision in paragraph (3). Concerning the questions about the interpretation of Alternative A and its application to goods not of the same kind, he drew the attention of the Committee to item (i), which contained a reference to goods of the same kind. Under Alternative A, items (ii) and (iii) did not contain that kind of language, which could lead to an "a contrario" conclusion that the latter provisions would apply to goods not of the same kind. He invited the Delegations who were in favor of that alternative to shed further light on this question. Finally, he said that some Delegations had expressed the wish to further work on Article 11 so as to refine its drafting, while other Delegations had suggested working on a compromise proposal instead of sticking to one of the proposed alternatives.

181. Mr. CURCHOD (CEIPI) requested for clarifications on the interpretation of Alternative A of Article 11(1). He wondered if items (ii) and (iii) of that alternative should be interpreted as applicable to products which are not the same type, considering that these two points do not repeat the expression "in respect of goods of the same kind". In his view, items (ii) and (iii) of Alternative A applied to both products of the same kind and those that were not of the same kind. In any event, he considered that the text of Article 11(1)(a) was complicated. In his view, a solution would be to rewrite Alternatives A and B of Article 11(1)(a) in order to facilitate discussions.

182. The CHAIR said that, in his view, the fact that items (ii) and (iii) did not include the terms "goods of the same kind" should imply that these two provisions would apply to all kinds of goods. In practice, however, they would be applied only to goods not of the same kind. He further concurred with the view expressed by the representative of INTA that, even if Alternative A was chosen as a basis, its drafting could be improved.

183. Ms. CHARIKHI (Algeria) said that her Delegation had wondered about the usefulness of item (iii) in Alternative C of Article 11(3).

184. Mr. HÖPPERGER (WIPO) recalled that Article 11(3) allowed a Contracting Party to declare that, instead of the protection standard provided in Article 11(1), it would apply another protection standard as reflected in Alternatives A to D. Those four alternatives took into consideration various standards under Article 11(1), which did not necessarily mutually match. Recognizing that the drafting contained some ambiguities, due to the number of alternatives, he acknowledged the need for further work.

185. Ms. COTTON (United States of America) expressed the concerns of her Delegation as to the applicability of Alternative A to dissimilar goods, on the one hand, and as to how the last section of Article 11(1)(a) applied to the other sections of Article 11(1)(a), on the other hand. Indicating that, in her Delegation's view, it would not make sense that the last section of Article 11(1)(a) applied to dissimilar goods, she announced that, before taking position on Article 11, her Delegation wished to see how these ambiguities would be resolved in the drafting process and how her concerns would be addressed.

186. The CHAIR sought comments regarding footnote 2 of Article 11.

187. Mr. POLINER (Israel) reiterated his Delegation's support for maintaining the footnote in the text, as it would be important not to give protection to the generic elements of a composite geographical indication.

188. The CHAIR said that he regarded the position expressed by the Delegation of Israel as a proposal to include the text without the square brackets in footnote 2.

189. Ms. COTTON (United States of America) said that her Delegation supported the proposal of Israel regarding footnote 2 of Article 11, in particular as regards the second sentence of the footnote, to provide greater clarity on the matter when a generic term was included in a compound geographical indication. The infringement standard under Article 11 could potentially be so broad as to make it possible to rehabilitate generic terms. In that regard, she wanted to make it clear that a geographical indication would not be found to be infringed, evoked or imitated by use of a single component of a geographical indication that actually had generic character.

190. Ms. MOORE (Australia) said that her Delegation wished to add its support to the Delegation of Israel in terms of the retention of footnote 2 to Article 11, to assist in interpretation and application of Article 11 and to help ensure that generic names would not be inappropriately monopolized simply because they would be included in compound geographical indications.

191. Mr. LONDOÑO FERNANDEZ (Colombia) underscored the great similarity between the discussion on the footnote in Article 11 on page 2 and the discussion on Rule 5(5) pertaining to the mandatory requirement of indicating or not indicating generic or non-generic items in the application.

192. Mr. SCHMIDLIN (Italy) asked whether the a Delegation's acceptance of footnote 2 in Article 11 would have the consequence that it would be also be considered to support the mandatory version of Rule 5(5), while noting that, if that were the case, his Delegation would reserve its position on that footnote.

193. The CHAIR confirmed that there was a connection between footnote 2 to Article 11 and Rule 5(5), although the footnote as contained in the draft New Act was broader, as it concerned limitations to the protection in respect of elements that had a generic character. In other words, the footnote could apply even in the absence of a formal mandatory requirement to the effect that applications for international registration should indicate whether or not the application related to a geographical indication or to an appellation of origin containing generic elements. However, Alternative A under Rule 5(5) would facilitate the application of the substantive provision in footnote 2. Although acceptance of footnote 2 did not necessitate the adoption of Alternative A under Rule 5(5), it made the case for that alternative stronger.

194. Ms. SCHULTE (INTA) said that INTA welcomed the second sentence in footnote 2 of Article 11, as it contributed to greater legal certainty. The actual scope of protection should not extend to generic elements, even in the Contracting Party of Origin. Therefore, she suggested that the first sentence of the footnote should clearly state that protection did not extend, in the Contracting Party of Origin or in the other Contracting Parties, to an element that had generic character in the Contracting Party of Origin.

195. The CHAIR, noting that there was a wish to find a compromise solution based on a refined drafting of the provisions in question, suggested leaving the various options to Articles 11(1)(a) and (3) pending for the time being, and invited proposals for further drafting.

Item (viii): The Draft Agreed Statement contained in footnote 1 to Article 11 and provisions relating to the same issue

196. The CHAIR opened the discussion on the Draft Agreed Statement in footnote 1 to Article 11 and invited the Secretariat to introduce the issue.

197. Mr. HÖPPERGER (WIPO) introduced the Draft Agreed Statement in footnote 1 to Article 11.

198. The CHAIR indicated that footnote 1 contained a Draft Agreed Statement by the Diplomatic Conference, which would be formalized as an Agreed Statement adopted by the Diplomatic Conference if it was taken on board. The text was intended to reflect an existing practice of the International Bureau and to serve as a confirmation that such practice would be continued also under the New Act of the Lisbon Agreement. He also indicated that the existence of Rule 9(2)(v) would depend on the outcome of the discussions on footnote 1 to Article 11.

199. Mr. POLINER (Israel) said that his Delegation supported the inclusion of the Draft Agreed Statement, as it believed that reference to homonymous geographical indications and appellations of origin was important and consistent with the TRIPS Agreement.

200. Mr. MELÉNDEZ GARCÍA (Costa Rica) indicated that, in order to give greater clarity and certainty to the Lisbon Agreement, it was appropriate to include the footnote found in Article 11 on page 1, since that provision left open the possibility of recognizing homonymous geographical indications within the framework of the arrangement, subject to the provisions of national law. Thus, the contracting parties would not be assuming any particular commitment to amend their respective national laws but the possibility would be open for them to do that under their national laws where feasible, such recognition being

consistent with the commitments of the Agreement. Furthermore, the footnote does no more than confirm international practice.

201. The CHAIR indicated that, thus, a proposal had been put forward by the Delegation of Israel for including the text of footnote 1, which was currently in square brackets, in the Draft New Act, and that this proposal had been seconded by the Delegation of Costa Rica.

202. Mr. MAYAUTE VARGAS (Peru) said that, for his Delegation, Article 11 was a fundamental provision of the agreement, and explained that, when Peru ratified the Agreement, it committed to the exclusive protection granted to appellations of origin and the stringent measures that would be taken to protect them in the other Contracting Parties. His Delegation held the view that, introducing an element such as homonymy in the Article 11 footnote on page 1 would affect the legal certainty that can reasonably be expected in that regard and it was for this reason that his Delegation was reiterating its request that the text in the footnote on page 1 should not be included in the new Agreement, either in its current format as a footnote or in any other part of the agreement text.

203. Mr. FERREIRA (Chile) recalled that his Delegation had already stated the importance that it attached to the subject matter broached in the agreed statement and felt that the inclusion of a standard that referred to the practice of homonymy in the Agreement was one way of securing an agreement that is coherent and consistent with international reality. The inclusion of such a standard would help to solve practical problems currently faced by members of the Agreement who recognize homonymous appellations of origin and geographical indications and who lack clear guidelines to follow on this issue under the Agreement. He recalled that this provision was originally treated as an integral part of the articles of the text and that his Delegation had always supported its inclusion. However, due to a lack of consensus among members of the Agreement, the subject was treated as an agreed statement, as from the seventh session of the Working Group. His Delegation considered that at least an agreed statement should be included in the revised version since its absence would mean a total lack of an express reference to the recognition of appellations of origin and geographical indications in the Agreement. In the Delegation's view, that would imply a lack of certitude and legal certainty for both contracting parties and beneficiaries. He underscored the fact that the concept of homonymy had been in existence for over 20 years since approval of the TRIPS Agreement and that it had been recognized in multiple international treaties, meaning that it was consistent with the relevant international law. Lastly, he recalled that the agreed statement proposed did not require the admission of homonymy, but was simply limited to giving clarity to the Contracting Parties that used it, and to interested third parties.

204. Mr. WU (China) said that his Delegation supported the inclusion of footnote 1, containing the Draft Agreed Statement, in the revised text.

205. Mr. SCHMIDLIN (Italy) said that his Delegation's understanding was that, even without a specific reference in a Draft Agreed Statement, the practice would exist, as was the case under the current Lisbon Agreement. In an attempt to de-dramatize the issue, he said that his Delegation was of the view that an express mention in a footnote would not be strictly necessary. His Delegation reserved its position on the matter pending the result of the more general discussion on Article 11.

206. Mr. VITTORI (oriGIn) was of the view that a Draft Agreed Statement would not be necessary, since the practice was already well established.

207. The CHAIR noted that there was no consensus on footnote 1. He observed that, with the exception of Rule 9(2)(5), the legal situation and the current or previous practice of the International Bureau would not change, whether the Agreed Statement was adopted or not. Therefore, this issue was highly symbolic. Pointing out that the text of the Draft Agreed Statement did not even use the term “homonymous”, he expressed the view that the Draft Agreed Statement only stated the obvious and was not intended to change the international legal framework or the current practice under the Lisbon Agreement. The only thing that the Draft Agreed Statement would achieve was to confirm that such practice would be continued also under the New Act.

208. The CHAIR adjourned the meeting.

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Item (ix): the content of Article 12 concerning protection against becoming generic

209. The CHAIR opened the discussion on Article 12.

210. Mr. HÖPPERGER (WIPO) introduced Article 12.

211. Ms. KOPECKÁ (Czech Republic), indicating that her Delegation was flexible as regards the text in the first square brackets of Article 12, expressed dissatisfaction with the final text in square brackets, which her Delegation proposed not to introduce in the Article. She also said that her Delegation was in favor of redrafting footnote 3 to Article 12.

212. Mr. ESFAHANI NEJADI (Iran, Islamic Republic of) said that his Delegation wished to delete all square bracketed text, except the text contained within the final pair of square brackets.

213. Mr. SCHMIDLIN (Italy) said that the position of his Delegation was similar to the one expressed by the Delegation of the Czech Republic.

214. Mr. KLING (Israel) said that his Delegation supported the retention of all the bracketed words in Article 12 and maintaining the content of footnote 3 to Article 12. He further underlined that his Delegation was willing to waive its position with regard to the first three pairs of square brackets, but felt that the last sentence in square brackets should remain as phrased. In view of previous discussions on the word “use”, he believed that some rephrasing was possible, as long as the requirements of “maintenance and renewal” remained as such.

215. The CHAIR, while noting that some Delegations would like to see refinements to the text of footnote 3, pointed out that footnote 3 was not bracketed.

216. Ms. CHARIKHI (Algeria) said that her Delegation wished to delete the words in square brackets at the beginning of article 12, but keep the last part of the sentence in square brackets because it brought more clarity to Article 12 and the manner in which it will be implemented.

217. Ms. MOORE (Australia) said that she strongly encouraged the deletion of Article 12. Requiring that a geographical indication could never become generic once protected unless declared generic in the country of origin could exclude from membership those countries which protected geographical indications under the trademark system. Silence on this issue would not affect the existing national laws and practices of Lisbon members, nor would it impede further policy flexibility in current or aspiring Lisbon members, but would have the effect of better enabling countries which protected geographical indications under the trademark system to join the revised treaty. She added that, once the geographical indication was protected in a Contracting Party, whether it would be considered to have become generic was a matter for the national law and circumstances of that member and should not depend on what happened in the country of origin. However, if deletion of Article 12 could not be agreed, her Delegation sought the retention of the bracketed text at the end of the provision, reading "and national or regional law requirements in the Contracting Party concerned regarding use, maintenance and renewal are met".

218. Ms. SALAH (Morocco) indicated that her Delegation was in favor of deleting the terms in square brackets.

219. Mr. WU (China) said that, whether registered appellations of origin or geographical indications had become generic or not should be judged by the competent authorities in accordance with the realities of their market. If, due to inappropriate use by the right holder, the product had become generic and lost its role to distinguish the origin, it was inappropriate to maintain the monopoly of the right holder on the denomination. Where a registered trademark had become a generic denomination for its authorized goods, any institution or individual could apply for its revocation. Consequently, his Delegation recommended retaining the text in the final pairs of square brackets in Article 12 and further suggested to add a provision which would read as follows: "However, if national and regional laws of the Contracting Parties concerned provide that a registered appellation of origin or geographical indication can be revoked when becoming generic, then anyone may, in accordance with the provision, apply to revoke the appellation of origin or geographical indication concerned."

220. Mr. FERREIRA (Chile) said that his Delegation supported maintenance of the phrase in square brackets at the end of Article 12. He explained that it seemed relevant to maintain protection against the generic character of geographical indications and appellations of origin registered internationally, not only when geographical indications and appellations of origin were protected in the Contracting Party of origin, but rather when they satisfied all the demands of national law.

221. Ms. COTTON (United States of America) expressed her support for the intervention made by the Delegation of Australia suggesting that Article 12 be deleted entirely. She said, however, that in order to be flexible, her Delegation had offered text that now appeared in brackets in this provision, with a view to maintaining Article 12 for those who wanted it, but also allowing the flexibility required by those countries that had use and maintenance requirements, like the United States of America. As had been explained by her Delegation, use requirements were critical for U.S. federal regulatory authority over trademark and

geographical indication registrations. In the United States of America, use and enforcement action were both required by the owner to rebut a claim from a third party that the geographical indication or the trademark had been abandoned, which would then allow others to use the term. If a term was shielded against becoming generic, which would result normally in the geographical indication right being found to be abandoned and therefore canceled, there was no deterrent preventing non-use by the owner. The bracketed text included in Article 12 would provide Contracting Parties with the possibility to require that any use, maintenance and renewal requirements in the receiving country be met. Such text was necessary for compatibility with the United States of America trademark system, in particular because it reflected the Constitutional requirements for federal regulatory authority over trademarks. She noted that the inclusion of the bracketed text, or even the deletion of Article 12 in its entirety, would not change the ability of Contracting Parties to provide this shield against genericism, if they so wished.

222. Ms. VIEIRA LOPES (Portugal) expressed her preference for deleting the text contained within the last pair of square brackets.

223. Ms. SCHERB (HEP), noting the importance of Article 12, stated HEP's view that the terms in square brackets should be maintained to allow the possibility for States wishing to accede to the Treaty to adjust their legislation if it was not consistent with the Treaty. She recalled that of the 17 OAPI Member States, only four were present, and over 52 countries on the continent were absent from the discussions. She expressed the wish for greater openness on the subject.

224. Ms. FOUKS (France) said that her Delegation did not wish for the phrases in square brackets to be retained. Moreover, she drew the attention of the Delegations to the footnote which helps clarify the fact that Member States had complete freedom, during the period of examination of the application for registration of the appellation of origin or geographical indication, to refuse protection if they considered that a name or indication was generic. She added that the discussion should not be distorted and that the case of underwater geographical indications, which was mentioned, was not applicable here, since States had a year to refuse protection, as appropriate, if there was a problem of genericity.

225. The CHAIR said that he wished to clarify a number of technical aspects of Article 12 without taking any position on the substance itself. Firstly, the initial part of the provision, which was a significant one, referred to the possibility for Contracting Parties to refuse applications on the ground that the appellation of origin or the geographical indication, for which protection was sought, was generic within their jurisdiction. As the Delegation of France had rightly pointed out, under the current system, there was one year for Contracting Parties to consider such a refusal. Article 12 only kicked in when there was no such refusal, and the concern of a number of Delegations was that the protection could become permanent in their territories, irrespective of anything that happened after the expiry of the one-year time limit for issuing refusals and irrespective of any circumstances that might occur after that time. The Chair mentioned the possibility of invalidation, but said that he preferred not to preempt the discussions on the grounds for invalidation.

226. Secondly, the CHAIR said that the words "be considered to have" in the text of the first set of square brackets, like those found in the current text of the Lisbon Agreement, enshrined a legal fiction to the effect that, whatever happened in a Contracting Party, the appellation of origin or the geographical indication could not be considered or deemed to have become

generic. Whether a geographical indication or appellation of origin had become generic was a question of fact. What happened in reality was not something that the law could change. If the words within the square brackets were not included, then the law might state something which was in conflict with reality. The text in the first set of square brackets followed, in a slightly different form, the language of Article 6 of the current Lisbon Agreement, which read that “an appellation [...] cannot [...] be deemed to have become generic”.

227. Concerning the second and third sets of square brackets, the Chair expressed the view that there was no sufficient support for keeping these words in the text. As regards the final set of square brackets, he suggested replacing the reference to “to national, regional law requirements in the Contracting Party concerned” by “requirements under the law of the Contracting Party concerned”, in order to use consistent terminology. He further indicated that he had difficulty understanding the difference between maintenance and renewal, and asked Delegations for an explanation. He also proposed to replace “...requirements in the Contracting Party concerned regarding use, maintenance and renewal are met” by “requirements under the law of the Contracting Party concerned regarding maintenance of protection are met”. Maintenance of protection could be interpreted as referring to either use requirements or renewal requirements, or both, depending on the law of the Contracting Party concerned.

228. Finally, the CHAIR stated that, although he had heard no fierce opposition to footnote 3, a number of Delegations had hinted at the need to improve its language. He called upon Delegations to express their concerns more specifically about the wording of this footnote or to propose changes to the text in an attempt to improve the drafting of this provision.

229. Ms. COTTON (United States of America) said that her Delegation supported the text within the first pair of square brackets, reading “be considered to have become generic”. She reiterated its support for maintaining the text contained within the second and third pairs of square brackets, pointing out that, whether or not a denomination or an indication was a geographical indication, was a question of national law and a factual situation in a Contracting Party. The denominations were not protected appellations of origin or geographical indications until the signs met the requirements of the law of the Contracting Party allowing them to be considered a protectable private property right in its territory. With regard to the difference between “use”, “maintenance” and “renewal” in the last set of brackets, she indicated that, for her Delegation, maintenance was a reference to the requirement to take enforcement action. In other words, the right was maintained by policing the right and taking action against unauthorized uses. Since “maintenance” could be considered to cover “renewal”, she proposed to drop the reference to renewal in the text, and just have the terms “use and maintenance”.

230. Mr. KLING (Israel) said that, in view of the interventions of the Chair and the Delegation of the United States of America, “use” might be construed as to be included in “maintenance” for the purposes of this Agreement and “renewal” was included in “maintenance”.

231. The CHAIR clarified that his previous suggestion was to add in Article 12 “maintenance of protection” and thus, the text would read “...requirements in the Contracting Party concerned regarding maintenance of protection”. As regards the intervention of the Delegation of the United States of America’s, concerning the second and third sets of square

brackets, the Chair proposed the following text, which would be the same as the original language of the Lisbon Agreement: “Subject to the provisions of this Act, a registered appellation of origin or a registered geographical indication cannot be considered to have become generic as long as it is protected in the Contracting Party of Origin as an appellation of origin or as a geographical indication and requirements under the law of the Contracting Party concerned regarding maintenance of protection are met”.

232. Ms. FOUKS (France) thanked the Chair and understood his proposal, although she felt that it was rather a matter of semantics. She added that the proposal was worth considering, while recalling that the wording of the article, which corresponded to the earlier wording of the Lisbon Agreement, had created ambiguity in people's minds, which was also reflected in the title given to the article. Regarding the second part of the Chair's proposal which was to add: “as long as it is protected in the Contracting Party of Origin as an appellation of origin or as a geographical indication”, the delegate wondered about the link that could be made between this addition and Article 8 which already organizes a dependency between international registration and maintenance of protection in the Contracting Party of origin. In conclusion, she asked whether the end of the sentence that the Chair proposed “and requirements under the law of the Contracting Party concerned regarding maintenance of protection are met” should be regarded as being in square brackets or forming an integral part of the Chair Non-Paper.

233. The CHAIR proposed to submit his proposal in writing in a Chair Non-Paper No. 4.

234. Mr. ESFAHANI NEJADI (Iran, Islamic Republic of), aligning himself with the statement made by the Delegation of France as regards the ambiguities of Article 12, requested the Chair to provide a written version of his proposal.

235. Ms. CHARIKHI (Algeria) thanked the Chair for the nuances given to certain terms and encouraged him to submit his proposal in writing.

236. Mr. KLINKA (Slovakia) said that his Delegation could preliminarily agree to the Chair's proposal.

237. Mr. LONDOÑO FERNÁNDEZ (Colombia) thanked the Chair for clarifying the legal fiction raised by Article 12. His Delegation considered that the establishment of maintenance fees was also pandering to a fiction legal. The delegate observed that the original text of the Lisbon Agreement referred solely to appellations of origin and Article 12 of the Basic Proposal of the new Act of the Lisbon Agreement referred to appellations of origin and geographical indications. Therefore, consideration could be given to the possibility of dividing Article 12, such that the original text is maintained for appellations of origin and another provision is proposed on the system of genericity for geographical indications depending on the system applied in the recipient country of destination, to the extent that there are differences in the wording used for appellations of origin and geographical indications.

238. The CHAIR, thanking the Delegation of Colombia for this suggestion, said that this proposal would go back in time, as, for a couple of years now, one of the main aims of the Working Group had been to provide the same level of protection for appellations of origin and geographical indications. As regards the question raised about the relationship between Article 12 and Article 8, the Chair recalled that Article 12 dealt with the content of protection

and Article 8 with the issue for how long there was a requirement to protect a geographical indication or an appellation of origin in the Contracting Parties. He said that the fact that, in both provisions, there was a reference to the status of protection in the Contracting Party of Origin might be misleading. On the one hand, Article 8, which closely mirrored Article 24.9 of the TRIPS Agreement, provided that there was no longer a requirement to give protection in respect of a registered appellation of origin or a geographical indication if that appellation of origin or geographical indication was no longer protected in the Contracting Party of Origin. On the other hand, the question in Article 12 was what kind of protection was to be provided to an appellation of origin or a geographical indication in a Contracting Party, as long as it was protected in the Contracting Party of Origin. The Chair requested the Secretariat to give its view.

239. Mr. HÖPPERGER (WIPO), recalling that Article 12 was inspired by Article 6 of the Lisbon Agreement, said that as long as a registered appellation of origin or a registered geographical indication was protected in the Contracting Party of Origin, it could not be considered to have become generic in the country of protection. In other words, Article 12 established a bar against assuming that such an appellation of origin or geographical indication had become generic and that bar existed as long as the appellation of origin or geographical indication concerned was protected in the Contracting Party of Origin. He added that Article 8 spoke about the validity of the international registration and should be understood as meaning that, once protection ceased in the Contracting Party of Origin, then the international registration would also cease. As the Chair had explained, Article 8 mirrored Article 24.9 of the TRIPS Agreement, which stated that there was no obligation for WTO members to protect geographical indications if they were not protected or if they had ceased to be protected in their country of origin.

240. The CHAIR said that Article 8(1) expressed the idea that protection was dependent on the protection in the Contracting Party of Origin; if there was no longer protection in the Contracting Party of Origin, there was no substantive obligation on the part of other Contracting Parties to provide protection for that appellation of origin or geographical indication in their own jurisdictions. Such a provision did not exist in the current Lisbon Agreement. Article 8(1) would be applicable irrespective of whether the international registration was cancelled or not. If protection against becoming generic under Article 12 was part of the protection to be provided in respect of a registered appellation of origin or a geographical indication, and if, under Article 8(1), there was no longer a requirement to provide this kind of protection because the appellation of origin or the geographical indication was no longer protected in the Contracting Party of Origin, the reference to the protection in the Contracting Party of Origin in Article 12 might be redundant. Observing that the text could be further simplified, the Chair indicated that a President Non-Paper would be submitted to the Committee for discussion.

Item (x): the content of Article 13 concerning safeguards in respect of prior trademark rights

241. The CHAIR invited the Secretariat to introduce Article 13(1).

242. Mr. HÖPPERGER (WIPO) introduced Article 13(1).

243. Ms. FOUKS (France) recalled that Article 13 was one of the modernizing elements of the Lisbon Agreement because hitherto the issue of relations with other rights had been treated only within the context of the implementing regulations which had been amended

accordingly. Her Delegation felt that one of the major advances of this revision was also the need to consider that geographical indications and appellations of origin exist in a world where there are other rights. The existence of such prior rights may lead to a refusal but there may also be some grounds for invalidation, subject to future provisions on invalidation. It was important to remember that this protection was not automatic; rather it could give rise to prior refusals by States. Regarding the two Alternatives proposed in Article 13, the delegate indicated that her Delegation supported Alternative A because it had emerged during the discussions as being the most balanced in taking account of the interests of the various parties, be they trademark owners or beneficiaries of the appellation of origin or geographical indication. While underscoring the importance of this balance, the delegate recalled that it was a co-existence organized in the mutual interest of the parties, including the consumer who is the final recipient of products.

244. Ms. CERENZA (Italy) said that her Delegation supported Alternative A, which she considered as a balanced compromise between appellations of origin, geographical indication and trademark interests.

245. Mr. YOSSFIOV (Bulgaria) expressed his Delegation's support for Alternative A, for the same reasons put forward by the Delegation of France.

246. Ms. VIEIRA LOPES (Portugal) said that her Delegation also supported Alternative A.

247. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) lent his Delegation's support to Alternative A, which was built on Articles 17 and 24.5 of the TRIPS Agreement, was more comprehensive and promoted legal certainty.

248. Mr. HAMDY (Tunisia) expressed his preference for Alternative A because it was consistent with the national laws of his country. Furthermore, he added that the coexistence between geographical indications, appellation of origins and trademarks was predicated on the fact that the public should not be misled.

249. Mr. GONDA (Hungary), aligning himself with the statement made by the Delegation of France, declared that his Delegation was in favor of Alternative A.

250. Ms. SÁNCHEZ TORRES (Cuba) said that her Delegation supported Alternative A.

251. Ms. DIAZ MORENO (Nicaragua) said that his Delegation supported Alternative A which contains elements of Articles 17 and 24(5) of the TRIPS Agreement and which is consistent with the national legislation of Nicaragua.

252. Ms MORARU (Romania) supported Alternative A for the same reasons presented by the Delegation of France.

253. Mr. WU (China) said that allowing coexistence between prior trademarks registered in good faith or acquired through use and subsequent geographical indications could be confusing to consumers, making it difficult for them to tell the origin of a good or service. For this reason, his Delegation disagreed with Alternative A. In order to avoid confusion for consumers, he proposed to clarify Alternative B to the effect that, as long as a prior trademark was still valid, a subsequent application for a geographical indication could not be registered.

254. Ms. BILEN KATIĆ (Serbia) expressed her Delegation's support for the statements made by the Delegations of Italy, Bulgaria, Portugal, and Hungary in support of Alternative A.

255. Mr. HÖPPERGER (WIPO) said that, in light of the intervention by the Delegation of China, it would be useful to highlight the "chapeau" of Article 13(1), which provided that Contracting Parties were not obliged to accept the effects of an internationally registered appellation of origin or geographical indication. Refusals could be based on any ground, including a prior trademark in the country concerned. Thus, Alternatives A and B only kicked in where the effects had not been refused, setting out some safeguards for prior trademarks.

256. Ms. MOORE (Australia) said that her Delegation was deeply concerned about the implementation risks of Alternative A. She said that a later claimed right that was first obtained in a country of origin, under that country's laws and circumstances, should not coexist by default with an earlier trademark in a destination Contracting Party. Such a default system of coexistence, where a later right could automatically erode a prior right would undermine business confidence in using the trademark system in Contracting Parties which accepted it. Consequently, the Delegate strongly supported Alternative B, as in her view, earlier trademark rights acquired legitimately under national laws of the Contracting Party concerned should be respected and subject only to the limited exceptions allowed under TRIPS Article 17, consistent with the World Trade Organization dispute outcomes on the relationship between later geographical indications and earlier trademarks.

257. Mr. WU (China) thanked the Secretariat for the explanation and declared that his Delegation could consider withdrawing its proposal, on the condition that there was no possibility of coexistence under Alternatives A or B.

258. Ms. COTTON (United States of America) strongly supported Alternative B, which made the protection of the appellation of origin or geographical indication subject to prior trademark rights under domestic law, and strongly opposed Alternative A, which appeared to enshrine the concept of coexistence of two conflicting identifiers. Pointing out that trademark owners were granted exclusive rights under TRIPS Article 16, she said that coexistence was not possible in the United States of America. Pre-existing trademark rights had priority and exclusivity over later comers, including geographical indications. There were, however, some governments that wished to evaluate, under the terms of TRIPS Article 17, whether prior trademark exclusive rights should give way, in some instances, to later filed geographical indications, and under what conditions the later right and the prior right should exist, in a way that best promoted fairness and minimized consumer confusion. This was within the national law's prerogative. Alternative B gave the ability to Contracting Parties to apply coexistence under the terms of TRIPS Article 17 or no coexistence under TRIPS Article 16, as was the case in the United States of America. The Delegate stressed that her Delegation was very concerned with the formulation in Alternative A, which appeared to take two different Articles of the TRIPS Agreement, mashing them together in a way that made it very difficult to understand the standards to be applied. There were phrases that were pulled from Article 24.5 of the TRIPS Agreement, which did not regulate the relationship between prior trademark rights and later-in-time geographical indications, and there were provisions from Article 17 of the TRIPS Agreement, which did regulate the relationship, along with Article 16, between prior trademarks and later-in-time geographical indications. The Delegate, observing that Alternative A combined two different provisions that were doing two different things in the TRIPS Agreement, expressed her grave concerns about how this would be

interpreted. Therefore, she aligned herself with the interventions made by the Delegations of Australia and China in support of Alternative B.

259. Ms. SALAH (Morocco) supported Alternative A, which her Delegation considered to be consistent with the provisions of the TRIPS Agreement.

260. Ms. LEE (Republic of Korea) said that her Delegation supported Alternative B, as it was in line with the TRIPS Agreement.

261. Mr. SATO (Japan) said that his Delegation was in favor of Alternative B, as it was likely to have a low impact on trademark right holders and on WIPO Member States.

262. Mr. LONDOÑO FERNANDEZ (Colombia) said that his Delegation found no problem with a system of coexistence between appellations of origin and trademarks. Furthermore, there was no violation of the TRIPS Agreement since this Agreement established in its Article 2 that provisions on trademarks and all the provisions of chapters 2, 3 and 4 should essentially be understood within the meaning of the Paris Convention, which defines in its Article 6 the grounds for non-filing of a trademark. Hence, there can be no earlier rights presented in generic or descriptive terms. Therefore, his Delegation believed that Alternative A was the best option.

263. Ms. OBANDO (Costa Rica) said that her Delegation supported Alternative B, which was consistent with the provisions of the TRIPS Agreement and adequately reflected the principle of first come, first served, enshrined in the national laws of Costa Rica. Additionally, this option made it clear that coexistence was not mandatory.

264. Ms. KIRIY (The Russian Federation), pointing out that Alternative A was understandable, stated that such Alternative reflected more accurately the situation in a number of different legislations with regard to the coexistence of rights. In the Russian Federation, it was possible to take into account the interests of prior trademark owners and to allow those owners to give their approval to the granting of protection of a later right.

265. Ms. SCHULTE (INTA) welcomed the inclusion of a clause providing for safeguards in respect of trademark rights, but expressed INTA's concerns about the wording suggested in Alternative A. Such language could be understood to impose undue limitations on the continued right of existence of prior trademarks and therefore raised concerns under Article 16 of the TRIPS Agreement and the fundamental rights and guarantees for the protection of private property under International Human Rights Standards. The way in which the legitimate interests were referenced in Alternative A could suggest that there could be situations in which the weighing of interests could lead to the conclusion that continued use and permanence of a trademark registration was no longer allowed, even if that right had been acquired prior to the geographical indication. While INTA understood that the language in question was included bearing in mind Article 17 of the TRIPS Agreement, the context of that Article was quite different, since it dealt with limited exceptions to the rights conferred by trademarks, such as fair use of descriptive terms. The language in Alternative A went beyond establishing limited exceptions and appeared to put in question the very right to the continued existence of a prior trademark. Finally, she raised concerns about the way the requirement "that the public is not misled" at the end of Alternative A, was drafted. She explained that, where a trademark in itself misled the public in a specific jurisdiction, its cancellation should be possible, whereas the language in Alternative A did not make it clear that this limitation

could only apply if the trademark in itself was misleading in the jurisdiction concerned. It was therefore open to interpretation that, where coexistence would lead to confusion, the right for the trademark to continue to exist could be put in doubt, even if the trademark had priority in time and was not misleading as such, and should therefore prevail. Reiterating INTA's position that conflicts between trademarks and geographical indications were to be resolved on the basis of the principle of "first in time, first in right" and the principles of exclusivity and territoriality, Alternative B was more appropriate to ensure respect for prior trademark rights, in compliance with existing obligations under the TRIPS Agreement.

266. Mr. VITTORI (oriGIn), recalling that under the Lisbon Agreement there was a possibility to refuse the protection of appellations of origin based on a previously registered trademark, said that the point of view of countries that strictly applied the "first in time, first in right" approach was fully reflected in the system as it was, and that Alternative A reflected the position of countries that applied coexistence, in full respect of WTO jurisprudence and rules.

267. Mr. SIRONI (AIPPI), stating that AIPPI's position was that the guiding principle in conflicts between geographical indications and trademarks was the principle of "first in time, first in right", expressed his support for Alternative B, which was in line with this position.

268. Mr. BATANGA (OAPI) expressed the support of this Delegation for Alternative A, which was closest to the community legislation of OAPI.

269. Mr. KUMER (United Kingdom), indicating that his Delegation would like to reserve the right to express its position on this provision at a later stage, requested clarification as to whether the words "that the public is not misled" meant "misled by the introduction of the new geographical indication into the Contracting Party's system".

270. Ms. SCHERB (HEP) felt that the existing differences on this point were regrettable and therefore considered that it would be interesting to broaden the debate by introducing lawyers, economists, and other organizations in the field of intellectual property. Such openness would be desirable for non-governmental organizations so that they can better understand this complex topic and train other non-governmental organizations that do not have the opportunity to travel, or even the possibility of having internet access. Noting that only 28 of the 180 countries were members of the Lisbon Agreement, HEP considered that it would have been appropriate if the discussion had been opened to other countries wishing to join the Agreement. She added that both alternatives could be adjusted to cover everyone's concerns.

271. The CHAIR invited the Secretariat to respond to the question raised by the Delegation of the United Kingdom.

272. Mr. HÖPPERGER (WIPO), pointing out the difficulty of giving an interpretation of a text that was the result of years of negotiation, said that the public could be misled by the use of the later geographical indication, but could also be misled by the earlier trademark, depending on the extent to which the signs were known by the public. Hence, the response could not be straightforward, as it depended on the circumstances. For example, the Council Regulation (European Union) on quality schemes for agricultural products and foodstuffs contained a provision with a similar proviso, referring to well-known marks. Under that provision, where the earlier trademark was well known, the later geographical indication could not coexist with it because the public could be misled. The more the earlier trademark

was known, the more there was a possibility that the public could be misled by the later geographical indication. This could also work the other way: the better the later geographical indication was known, the more there was a probability that the public would be misled if the earlier trademark had, for example, been used in very limited circumstances.

273. Ms. COTTON (United States of America) said that the answer by the Secretariat to the Delegation of the United Kingdom raised two questions for her Delegation. The first question concerned a suggestion in the Secretariat's explanation that there might be cases of coexistence between a prior trademark and a later-in-time geographical indication, under Alternative A, where the trademark that preexisted was of high renown. She recalled that, in WTO dispute settlement precedent, the cases where coexistence could be seen as consistent with Article 17 of the TRIPS Agreement were limited to those where the trademark would cause a low likelihood of confusion with the later geographical indication. In her understanding, under the case law precedent, coexistence would not be allowed where the prior trademark was of high renown and there would therefore be a high likelihood of confusion with the later-in-time geographical indication. However, she had heard from the Secretariat that Alternative A appeared to be a case where any prior trademark, no matter whether there was a low likelihood of confusion or a high likelihood of confusion with the subsequent geographical indication, would have to coexist. That seemed to her Delegation to be inconsistent with what it understood to be the limited exception provided in Article 17 of the TRIPS Agreement. Under these circumstances, Alternative B was the only WTO-consistent alternative and Alternative A raised serious concerns with WTO consistency in general. The second question was that, under the terms of Alternative A, it was possible to prejudice a prior valid trademark by virtue of establishing a later geographical indication because the public might become over time misled by the use of that prior valid trademark. Thus, the trademark could become invalid because it was misleading or deceptive by virtue of the later geographical indication. This suggested that trademark rights could be prejudiced even though Alternative A indicated that they were not supposed to be prejudiced. The Delegate found that inconsistency alarming and reiterated her concerns about Alternative A.

274. The CHAIR said that the Secretariat had not mentioned anything to the effect implied by the first question of the Delegate of the United States of America. On the contrary, the issue raised by the Delegation of the United States of America of how trademarks having a renown or reputation should be dealt with under Alternative A fully corresponded with what the Secretariat had just stated.

275. The CHAIR concluded that the views were split at this stage. He observed that questions had been raised as to the proper interpretation of Alternative A, which might indicate that further work was required to refine its wording, especially if such refinements might elevate the concerns of those Delegations that currently supported Alternative B. He further noted that there was at least one Member Delegation supporting Alternative B. The Chair proposed to suspend the discussion on Article 13(1).

CLUSTER C: ISSUES CONCERNING OTHER PROVISIONS RELATED TO THE LEGAL EFFECT OF INTERNATIONAL REGISTRATIONS

Item (xi): the content of Article 16(2) concerning negotiations following a refusal

276. The CHAIR opened the discussion on Article 16(2).

277. Mr. HÖPPERGER (WIPO) introduced Article 16(2).
278. Mr. SCHMIDLIN (Italy) declared that his Delegation was in favor of retaining paragraph (2), as it was in line with Article 24.1 of the TRIPS Agreement.
279. Mr. YOSSIFOV (Bulgaria) seconded the proposal made by the Delegation of Italy, as his Delegation considered that this paragraph was an enabling provision which did not oblige anybody, but rather gave the opportunity, if necessary, to negotiate the possible removal of a refusal.
280. Ms. KOPECKÁ (Czech Republic) associated her Delegation with the Delegation of Bulgaria in supporting the statement made the Delegation of Italy.
281. Ms. OBANDO (Costa Rica) said that her Delegation did not deem it appropriate to have such a provision because it left open the possibility of questioning the reasons why a national authority denies a registration, when there are other legitimate means provided for in the legislation of the Contracting Party, referred to article 15, for addressing this problem. The delegate further noted that questions were emerging, relating to the Contracting Party with whom to negotiate, who will carry out the defense and the terms on which the negotiations should be held.
282. Ms. VIEIRA LOPES (PORTUGAL) said that her Delegation was of the view that paragraph (2) provided further flexibility and should therefore be retained.
283. Mr. KLING (Israel), seconding the position expressed by the Delegation of Costa Rica, said that this issue was a matter of private property rights and was dealt with in Article 15(5).
284. Ms. FOUKS (France) said that her Delegation supported the introduction of this provision in light of the reasons given by the Delegation of Italy.
285. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) expressed his Delegation's support for removing the brackets of paragraph 2 and keeping the text in Article 16.
286. Ms. CHARIKHI (Algeria) said that her Delegation endorsed the positions of the countries which favored maintenance of Article 16 as it is.
287. Mr. RENDÓN ALGARA (Mexico) welcomed the arguments of the Delegation of Costa Rica and said that his Delegation deemed it relevant to delete Article 16(2) in order to make the treaty simpler.
288. Mr. KLINKA (Slovakia) associated his Delegation with the statements made by the Delegations of France, Iran (Islamic Republic of) and Portugal.
289. Ms. NOVAKOVIĆ (Serbia) stated that her Delegation was in favor of paragraph (2) in Article 16.
290. Mr. GONDA (Hungary) expressed his preference for deleting the square brackets and retaining the text, noting that, even without such provision, nothing would prevent Contracting Parties from opening negotiations. Therefore, he could also consider the possibility of deleting paragraph (2).

291. Mr. HAMDI (Tunisia) said that his Delegation was in favor of removing the square brackets from this text, given its optional nature.
292. Ms. VIGNJEVIĆ (Bosnia and Herzegovina) said that her Delegation concurred with the views expressed by the Delegations of the Czech Republic and Serbia.
293. Ms. COTTON (United States of America) said that her Delegation supported the deletion of the text in Article 16(2), because it identified a Contracting Party of Origin, which was not itself the owner of a registered appellation of origin or geographical indication, as an interested party for the purposes of negotiating a withdrawal of a refusal. This was inconsistent with domestic legal principles and caused significant problems for those countries that limited the types of interested parties that could be party to a dispute. If there was to be a conversation surrounding the appropriateness of a refusal by a Contracting Party's national office, that conversation was between the applicant and the national Office in an ex parte process. She had a concern that this provision confused the difference between trade negotiations, which were handled by governments, and national geographical indication decisions over property rights made under national law. The New Act of the Lisbon Agreement was supposed to be a geographical indication filing system, not a trade agreement, and the text should remain silent on who was allowed to be a party to an appeal on a refusal to register a geographical indication at the national level. She further stated that Article 19(2) of the Basic Proposal acknowledged that beneficiaries and the legal entity representing the rights of the beneficiaries had a legitimate interest, so that they should be given the ability to contest an invalidation action at the national level. The Competent Authority or the Contracting Party of Origin itself was not acknowledged as having the same interest under Article 19(2) because the text recognized that national laws did not give legal standing to the Contracting Party of Origin to become a party to an invalidation proceeding in a receiving Contracting Party. It seemed contradictory to bestow upon a Contracting Party of Origin the legal standing to intervene in what should be an ex parte application process for geographical indication recognition under Article 16(2) or an inter partes opposition or cancellation proceeding between two private parties.
294. Ms. MORARU (Romania) said that his Delegation was in favor of maintaining the text of Article 16(2) and supported the statements of the Delegations that requested for removal of the square brackets.
295. Mr. WU (China), stating that his Delegation disagreed with Article 16(2), proposed to delete it, as Article 15(5) provided judicial and administrative remedies to the applicant affected by a refusal and that it was not necessary to establish an intergovernmental negotiation procedure for the withdrawal of a refusal.
296. Ms. SALAH (Morocco) said that her Delegation preferred that Article 16(2) be deleted, in order to avoid interference between the bilateral negotiations that may take place and the principle of most-favored-nation treatment established by the TRIPS Agreement. She added that Article 15(5) of the new Act offered the possibility of resorting to the relevant remedies available under national law to seek withdrawal of the refusal. Furthermore, the other international systems, such as the Madrid, Hague and PCT system, do not include such a provision.

297. Ms. GÜVEN (Turkey) said that her Delegation was of the view that this provision might create problems in the future and that there was no reason to have a similar provision to the one provided by the United Nations Charter on dispute settlement. If the intent was to have a provision on dispute settlement or negotiations, it had to be regulated in detail.

298. Ms. MOORE (Australia) said that her Delegation supported the deletion of Article 16(2), as this provision risked creating the impression that standing would not be necessary in relation to national law requirements for review, whether in front of the national IP office, a tribunal or a court. Additional risks were that such a provision could be interpreted as capable of influencing decisions made under national law. As Article 16(2) was not mandatory, its deletion would not impact existing practices. Finally, she disagreed with some Delegations' reliance on TRIPS Article 24.1 to support retaining Article 16(2), as there did not appear to be any connection between those two provisions.

299. Mr. FERREIRA (Chile) said that his Delegation was in favor of deleting Article 16(2) and that he was concerned that the inclusion of this standard could mean an opening for questioning the decisions taken by national authorities.

300. Ms. BOKYUNG (Republic of Korea) said that her Delegation concurred with the views expressed by the Delegations of Australia, China, Turkey and the United States of America.

301. Ms. SÁNCHEZ TORRES (Cuba) said that her Delegation supported the deletion of paragraph (2).

302. Mr. BATANGA (OAPI) indicated that sub-paragraph (2) posed a problem for OAPI because not only were rights holders not participating personally in the negotiation, but the negotiation capacity of the parties would predispose them to random results. Consequently, OAPI was of the view that a legal solution was the best.

303. The CHAIR noted a split on this issue and adjourned the meeting.

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Item (xi): The content of Article 16(2) concerning negotiations following a refusal (cont'd)

304. Ms. KOUBITOBO NNOKO (Cameroon) supported the statement made by the Delegation of OAPI. She indicated that, under the laws of her country, leaving the option open to negotiations could give an opportunity to the competent authorities but would not address the interests of owners of geographical indications and the State. Accordingly, her Delegation was in favor of deleting Article 16(2).

305. Mr. CURCHOD (CEIPI) supported the point made by the Delegation of Hungary. The omission of Article 16(2) would not stop the contracting party of origin from proposing negotiations to another contracting party. He added that neither inclusion nor the omission of this provision would prevent the other Contracting Party from refusing to enter into negotiations with the Contracting Party of origin, especially for the reasons given by the Delegation of the United States of America. He concluded that it would be preferable to exclude Article 16(2) from the new Act.

306. Ms. SCHULTE (INTA) supported the deletion of Article 16(2), sharing the concerns voiced by a number of Delegations. For INTA, such provision was not needed since States were generally entitled, under public international law, to enter into negotiations. INTA was also concerned about the fact that this provision suggested that such negotiations were an appropriate tool in the context of a refusal. However, INTA was of the view that Competent Authorities would notify refusals as required by their national law, i.e., not on the basis of diplomatic observations. Negotiations between the Contracting Party of Origin and the country of protection would be inappropriate where private rights of nationals of third countries were involved.

307. Mr. THORN (CCFN) supported the deletion of Article 16.2, reporting that CCFN was aware of recent cases where a party had used leverages of bilateral trade agreements to pressure trading partners to bypass their normal procedures and to discontinue the use of common and generic names in their domestic market. CCFN was concerned that Article 16(2) would be used in a similar manner.

308. Mr. VITTORI (oriGIn) expressed a preference for maintaining Article 16(2), drawing the attention of the Committee to the fact that geographical indications were private rights in some States and public rights in other States. Therefore, where the State was the owner of the geographical indication or the appellation of origin, such negotiations could be relevant and appropriate. Moreover, negotiations did not necessarily imply a political bargain. Practices showed that the objective of negotiations could be to better implement the law, as some refusals could be issued because of emotional reasons rather than the application of the law. Therefore, the Committee should not consider such negotiations only from a political perspective.

309. Ms. SCHERB (HEP) underscored the importance of Article 16 and wondered who would have the ability to negotiate. Therefore she suggested that the provision be clarified in this respect.

310. Mr. SATO (Japan) indicated that his Delegation was in favor of the deletion of Article 16(2). Pointing out that the Madrid and Hague systems did not provide for negotiations, he stated that negotiations between Contracting Parties were not suitable for any registration system of intellectual property rights, including geographical indications.

311. The CHAIR, noting that the Committee was divided, invited Delegations to express their views on a possible deletion of Article 16(2). In his view, such deletion would not prohibit Contracting Parties to propose negotiations and would be more favorable to those supporting Article 16(2), as there would be no condition for proposing negotiations.

312. Mr. VASSILAKIS (European Union) said that his Delegation supported the analysis made by the Chair. Referring to Article 16(1), he pointed out that it contained neither

conditions nor reservations, thus offering a margin of discretion for a withdrawal. He believed that negotiations could be one way of achieving such a withdrawal, as had been pointed out by the Delegation of Hungary, and that this was a matter of discretion and sovereignty for each Contracting Party. In his view, the other Contracting Party remained free to accept or refuse such negotiations. His Delegation understood that Article 16(2) guided these negotiations at three levels: first of all, the initiative for negotiations must emanate from the Contracting Party of origin; secondly, this faculty would apply only if deemed appropriate, which will require analysis on a case by case basis depending on the circumstances of each individual case; and thirdly, this could not in any way deviate from the principles and the legal system of each Contracting Party, once reference is made to Article 15(5).

313. Ms. VIEIRA LOPES (Portugal) indicated that her Delegation could consider deleting Article 16(2), as nothing would prevent Contracting Parties from entering into negotiations.

314. Mr. KLINKA (Slovakia) announced that his Delegation could also agree to the deletion of Article 16(2).

315. The CHAIR, recalling that statements on Article 16(2) would be part of the records of the Diplomatic Conference, declared that he assumed that Main Committee I accepted to delete Article 16(2).

Item (xii): the content of Article 17 concerning the necessity of a phasing out period

316. The CHAIR opened the discussion on Article 17.

317. Mr. HÖPPERGER (WIPO) introduced Article 17.

318. Mr. SCHMIDLIN (Italy) indicated that his Delegation did not see any danger in keeping Article 17(1). Article 17(1) confirmed that, in case of prior use, the protection could be refused and, if not refused or if the refusal was withdrawn, the prior user had the possibility of a phasing out period.

319. The CHAIR underlined that, for prior users, the inclusion of this provision was beneficial.

320. Ms. LAUMONIER (France) shared the view expressed by the Delegation of the Italy. Considering that Article 17(1) offered flexibility to earlier users, she said that her Delegation welcomed the introduction of this provision into the basic text.

321. The CHAIR said that, thus, the proposal for amendment from the Delegation of Italy was seconded by the Delegation of France.

322. Ms. KOPECKÁ (Czech Republic) said that her Delegation supported the proposal made by the Delegation of Italy.

323. Ms. VIEIRA LOPES (Portugal) stated that her Delegation supported the statements made by the Delegations of the Czech Republic, France and Italy.

324. Mr. KLING (Israel) indicated that his Delegation aligned itself with the comments of countries supporting the inclusion of Article 17(1). However, the provision should not adversely affect the safeguards for prior rights.
325. Mr. GONDA (Hungary) said that his Delegation associated itself with the proposal put forward by the Delegation of Italy regarding the inclusion of this provision into the text.
326. Mr. RENDÓN ALGARA (Mexico) said that the Delegation of Mexico aligned itself with the statements made by the previous Delegations and supported the inclusion of the text.
327. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) expressed the support of his Delegation for the inclusion of Article 17(1) in the text of the Basic Proposal.
328. Mr. KLINKA (Slovakia) expressed the support of his Delegation for the inclusion of Article 17(1) in the text of the Basic Proposal.
329. Mr. MELÉNDEZ GARCÍA (Costa Rica) said that his Delegation also supported the inclusion of the text in its entirety for the reasons expressed above.
330. Mr. OKIO (Congo) indicated that his Delegation supported the Delegations that asked for the retention of Article 17(1).
331. Ms. CHARIKHI (Algeria) indicated that her Delegation also supported the Delegations that asked for the retention of Article 17(1).
332. Mr. WU (China) said that his Delegation suggested deleting Article 17(1) and leaving Contracting Parties free to decide what to do in the case of prior uses interfering with a foreign appellation of origin or geographical indication. Phasing out would inevitably cause damage to prior users, which was not fair. He added that, in the interest of consumers, Contracting Parties could require prior users to add appropriate distinctive elements.
333. Ms. MORARU (Romania) said that her Delegation also supported the proposal made by the Delegation of Italy and supported by other Delegations, that Article 17(1) be maintained.
334. Ms. COTTON (United States of America) sought further clarifications with respect to the relations between Article 17(1) and Articles 13 and 15. She stated that the first concern of her Delegation was whether prior trademark rights were safeguarded. The second concern related to generic uses. Her Delegation understood that Contracting Parties had the ability to refuse a registered appellation of origin or geographical indication if the denomination or indication was considered generic in their territory. She referred to situations of a commonly used term that phased out without due process to contest this. Such situations were unacceptable. She pointed out that her Delegation had been reassured in the past that Article 17(1) was a permissive provision. However, it was now said that without this provision Contracting Parties could not phase out prior uses. She underlined that this provision seemed to be an intrusion into national laws and determinations on how to handle prior generic uses, prior uses that were not generic, trademark rights and how to balance consumer interests. Therefore, she declared that her Delegation supported the deletion of this provision.

335. Ms. SALAH (Morocco) said that her Delegation favored maintenance of Article 17(1) insofar as it had no impact on its national law and that she also considered that this provision would allow the Treaty to be inclusive of other legislations.

336. Ms. MOORE (Australia) expressed the support of her Delegation for the deletion of Article 17(1). She said that a fundamental precept of an intellectual property system was the balance between public and private rights with safeguards related to the subject matter considered to be in the public domain. For this reason, geographical indication regimes often prohibited the protection as such of terms which were generic for the relevant goods. In contradiction to this, Article 17(1) envisaged that a Contracting Party might allow the monopolization of the term that was already generic in its territory and then phase out its legitimate use. She concluded by saying that, since Article 17(1) was not mandatory, its deletion would have no impact on existing and future laws and practices, but could encourage greater membership of the Lisbon System.

337. Mr. LONDOÑO FERNANDEZ (Colombia) said that item (a) provided the possibility of coexistence between a geographical indication or appellation of origin and an earlier trademark, while item (b) seemed to refer to earlier use of an expression that is not a trademark. In his view, it would be worthwhile to provide a clarification that clearly determines whether prior rights exist or not, to the extent that if item (b) referred to prior use of an expression that is not a trademark, there would be no prior rights.

338. Ms. LEE (Republic of Korea) concurred with the opinion expressed by the Delegations of Australia and the United States of America on the deletion of Article 17.

339. Mr. THORN (CCFN), stating that CCFN strongly opposed the inclusion of Article 17(1), explained that, in the context of recent international negotiations involving geographical indications, a number of countries had come under pressure to discontinue the use of common and generic terms. He said that this provision carried with it the implication that prior uses should be phased out, which matched the negotiating position of geographical indication proponents in the said international negotiations.

340. Mr. VITTORI (oriGIn) stressed the fundamental difference between simple prior use of a geographical indication or appellation of origin and names that had become generic. Simple prior use did not mean that genericity had been reached. From this perspective, Article 17(1) seemed to be a logical consequence of Article 11 on the scope of protection. Contracting Parties would be in a position to judge if a name had become generic in their jurisdiction, and if so, the protection would be refused. Otherwise, if use had not reached genericity, such use had to be terminated as a logical consequence of Article 11. He added that oriGIn had some reservations on the reference to Article 15, which might be inappropriate.

341. The CHAIR, indicating that Article 17(1) might need some drafting refinements, said that this provision was not applicable to prior trademarks, as conflicts between prior trademarks and geographical indications and appellations of origin were dealt with under Article 13. He also clarified that generic names could not be monopolized and that, once they had become generic, Contracting Parties should draw the consequences of this and refuse the legal effects of the international registration. He also recalled that, as underlined by ORIGIN, this provision did not concern only generic names or prior use of generic denominations. As regards remedies available for prior users in respect of a decision to grant a phasing out period, he referred to Article 15(3), which established the obligation for Contracting Parties to

provide an opportunity for interested parties to request the Competent Authority to notify a refusal. Thus, interested parties could draw the attention of the Competent Authority to prior use. Finally, he pointed out that Article 17(1) could not be read as an obligation for Contracting Parties to grant phasing out periods for prior users, but simply as an option.

342. Mr. VASSILAKIS (European Union), expressing the view that the text of Article 17 should remain as it stood, pointed out that, if in the territory of a Contracting Party a name was deemed generic, it would not be possible to register that name as an appellation of origin or geographical indication in that territory. Therefore, his Delegation was of the view that there would be no issue relating to phasing out. However, if a name was not generic and there were no other grounds for the refusal of the registration in a Contracting Party, a grandfathering of prior uses would be allowed by Article 13 under certain conditions. That provision applied to trademarks, personal names in business and plant varieties or animal breeds. If a prior user had not been able to establish that a name was generic and to prevent the registration, he might have an interest in a phasing out period. Indicating that this possibility had been provided for at the European Union level since the first Regulation on designations of origin and geographical indications, he explained that the phasing out period was usually five years, but could sometimes be one year, if the problems faced by the operators were not that dramatic, or, in exceptional cases, due to historical reasons, 15 years. To conclude, he expressed his surprise by the proposal to delete this provision, as it offered a valuable possibility for operators, who would not be obliged to stop straightaway the marketing of their products.

343. Mr. WU (China), explaining that in China geographical indications were registered as certification marks or collective marks, said that, when the prior use of a trademark concerned a geographical indication, there was always a link between the geographical indication and the trademark.

344. Mr. BATANGA (OAPI) said that OAPI supported maintenance of Article 17(1).

345. Ms. COTTON (United States of America) said that her Delegation appreciated the Chair's explanation and reference to Article 15. However, noting that subparagraph (b) of Article 17(1) referred to a roadmap for Contracting Parties on how to phase out after a refusal, she sought clarification on the references to uses in subparagraphs a) and b).

346. The CHAIR invited the Secretariat to shed light on how Article 17(1) should be understood.

347. Mr. HÖPPERGER (WIPO), noting the concern expressed by Delegations about the effect of an international registration and how that would affect prior use as a generic, as a trademark, or in any other form, pointed out that Article 17 was not dealing with that issue at all. The question as to whether or not something was protected or covered by a grandfather clause was dealt with under Article 13. Article 17(1) would, consequently, not be operational with regard to, for example, prior trademark rights. The same applied in respect of refusals under Article 15. The purpose of Article 17(1) was to determine whether or not the effect of an internationally registered appellation of origin or geographical indication in a Contracting Party would kick in immediately or only after a phasing out period. The confusion expressed concerning the issue under discussion was also one of the main misunderstandings concerning Article 5(6) of the Lisbon Agreement of 1958, as it was often erroneously understood that, under that provision, Contracting Parties had to phase out prior use. However, they were

actually not required to phase out anything at all, if protection was refused. Article 17 would become operational only in the absence of a refusal or if a refusal was withdrawn. As regards the concern expressed by the Delegation of the United States of America, he suggested that Article 17(1)(b) might be re-drafted, so as to read “on the ground of a prior use that has not been safeguarded under Article 13”, rather than “on the ground of prior use as referred to in subparagraph (a)”.

348. The CHAIR noted that there was sufficient support for the inclusion of Article 17(1) in the text and considered that the concerns expressed could be overcome by further clarifying the provision in question through a refinement of the wording, in an attempt to reach a compromise.

Item (xiii): whether Article 19(1) should establish an exhaustive or a non-exhaustive list of grounds for invalidation

349. The CHAIR opened the discussion on Article 19(1).

350. Mr. HÖPPERGER (WIPO) introduced the two alternatives proposed in Article 19(1), pointing out that neither of them suggested an exhaustive list of grounds because both referred back to the chapeau of the provision, which stated that ‘the grounds on the basis of which a Contracting Party may pronounce invalidation, in part or in whole, of the effects of an international registration in its territory shall include’.

351. Mr. POLINER (Israel) said that, while he agreed with the Secretariat that both alternatives could be interpreted as including an open-ended list of invalidation causes, he preferred Alternative A, as it stated the open-ended nature of the list in a more definitive way than Alternative B. He expressed his preference for an open-ended list of causes of action for invalidation, in particular after hearing the conversation on Article 17(1) in the sense that, if a generic right or other right would have been missed during the examination period, the defendant would at least have a defense in that regard.

352. Ms. FOUKS (France), specifying that this provision was new relative to the current Lisbon Agreement, felt that the implementation of provisions clarifying the invalidation procedure was important because such a procedure seemed necessary in some cases. Her Delegation stressed the importance of having strictly defined grounds for invalidation in order to preserve the legal certainty of operators applying for registration, and considered that the period of one year left for the competent authorities to check that the appellation of origin or geographical indication is duly registered and has no grounds for refusal, is sufficient. Recalling that the grounds for invalidation should be limited, the delegate recognized two exceptions to the sustainability of the appellation of origin or geographical indication, namely the existence of a prior right and the case where the definition of the appellation of origin or the geographical indication is no longer protected in the Contracting Party of origin.

353. Mr. KRATOCHVÍL (Czech Republic) said that his Delegation also preferred Alternative B, because it provided a higher degree of legal certainty than Alternative A.

354. Ms. CHARIKHI (Algeria) expressed the preference of her Delegation for Alternative B, which provided more details on the grounds for invalidation, unlike Alternative A, which she considered too broad. Referring to item (ii) of Alternative B, the delegate wondered who

ruled on conformity with the definition of an appellation of origin or a geographical indication.

355. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) said that his Delegation supported Alternative B, for the sake of greater legal certainty.

356. Ms. VIEIRA LOPES (Portugal) said that her Delegation also preferred Alternative B, which provided greater legal certainty.

357. Mrs. MORARU (Romania) said that her Delegation preferred alternative B, because it considered that the grounds for invalidation should be limited and that this alternative offers more legal certainty.

358. Ms. COTTON (United States of America), indicating support for the intervention made by the Delegation of Israel, said that her Delegation had a preference for Alternative A, as the grounds for invalidation should not be limited and that invalidation options had to be left for national law decisions. Regarding the proposed item (ii) of Alternative B, she sought clarification as to whether the situation to which it referred was not already contemplated in Article 8, which provided that, if the appellation of origin or geographical indication was no longer protected in the Contracting Party of Origin, the international registration would no longer be valid and could be canceled. Without item (ii), Alternative B would look a lot like Alternative A.

359. The CHAIR said that, in his view, item (ii) of Alternative B would apply when compliance with the definition would not be ensured anymore in the Contracting Party of Origin, even if the appellation of origin or geographical indication was still protected there. In other words, if the Contracting Party of Origin failed to draw the consequences of a lack of compliance with the definition, invalidation of the effects of the international registration could be pronounced in other Contracting Parties.

360. Ms. RODRÍGUEZ CAMEJO (Cuba) said that her Delegation supported Alternative A.

361. Ms. CERENZA (Italy) expressed the preference of her Delegation for Alternative B, for the same reasons put forward by the other Delegations that had supported that option.

362. Mr. KLINKA (Slovakia) expressed the preference of his Delegation for Alternative B.

363. Ms. MOORE (Australia) said that her Delegation supported Alternative A. Limiting the grounds for invalidation to those proposed in Alternative B could be considered excessively cautious and could exclude from membership those countries which protected geographical indications under the trademark system. She pointed out that there were additional grounds on which invalidation could be warranted, including that the application would have been made in bad faith, that the rules governing the use of the certification mark would be detrimental to the public, or that the registered owner or an approved user would have failed to comply with the provisions under the rules governing the use of the certification mark. In addition, an administrative decision to protect the geographical indication could have been made in error, for example in the absence of all the information required to determine whether or not the application was made in bad faith. Therefore, it would be necessary to have a mechanism to correct such errors, the nature of which could not always be predicted. An

appropriate range of robust and meaningful review mechanisms would be an important feature of a system that would operate transparently and in the public interest.

364. Mr. WU (China) said that his Delegation could not support any of the two alternatives, as they both had limitations with which he did not agree. Instead, he was of the view that the grounds for invalidation had to be determined by the relevant authorities according to their national laws and regulations.

365. Ms. SALAH (Morocco) expressed the preference of her Delegation for Alternative A because it was broader and did not limit the grounds for invalidation.

366. Mr. BATANGA (OAPI) said that OAPI proposed a referral to the national law of the Contracting Party which would provide for invalidation criteria. Otherwise, OAPI preferred Alternative A because of the non-limiting nature of the grounds for invalidation.

367. Ms. KOUBITOBO NNOKO (Cameroon) supported the proposal made by the Delegation of China that the grounds be determined according to national law. For her Delegation, Alternatives A and B were both limiting because laws may provide other grounds for invalidation.

368. Ms. SCHULTE (INTA) welcomed the fact that Alternatives A and B both specifically referred to prior rights as a possible basis for invalidation, but was also concerned about the suggestion made that there should be limitations to the grounds for invalidation brought forward in connection with Alternative B, which listed only two scenarios. INTA was of the view that, in line with the current Lisbon System, no limitation had to be imposed on the grounds for invalidation. That was particularly important in view of the proposed broad scope of protection for geographical indications under Article 11, which made it difficult for potentially affected parties to predict the circumstances in which a conflict could arise. As with every intellectual property right, INTA was of the view that a geographical indication should only enjoy continued protection if it actually met the protection requirements in the specific territory and if the free availability of terms for use by traders was limited by terms that should never have been protected. In that regard, it would be excessive and contrary to constitutional law requirements in many countries to draw an administrative silence from a failure to notify a refusal and to provide a permanent protection, even where the protection requirements had not been fulfilled. She concurred with the statement made by the Delegation of Australia, indicating that the Competent Authority might not have had the necessary information or resources to correctly assess within the one-year period whether or not the protection should have been granted. She concluded that there should be a possibility for errors to be corrected, just as it was possible under the Madrid System to invalidate the territorial extension of an international trademark registration, in spite of no refusal having been notified within the applicable time limit.

369. The CHAIR, noting that the views were divided between the two alternatives, pointed out that a third view had been expressed, namely that the revised text should not even deal with the issue. Such view was based on the current Lisbon Agreement, where neither the grounds for refusal nor the grounds for invalidation were listed. He wondered whether a possible way out would be to use language similar to that contained in Article 5(6) of the Madrid Protocol, leaving the matter to the national legislation of the Contracting Parties. He added that, even though he understood the concerns of some Delegations, he did not think that

the inclusion of an exhaustive list would be consistent with the fact that the revised text did not include a list of possible grounds for refusal. Finally, he was of the view that a non-exhaustive list would be an element that would help attract a wider membership.

370. The CHAIR adjourned the meeting.

Sixth Meeting Thursday, May 14, 2015 Morning
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CLUSTER D: ISSUES CONCERNING FEES AND THE FINANCING OF THE LISBON SYSTEM

371. The CHAIR identified two sub-clusters within Cluster D. The first was the possible introduction of individual fees, which he suggested to address separately. The second grouped the remaining three items within Cluster D and concerned the financing of the Lisbon System. He suggested discussing the introduction of individual fees first.

Item (vi): Article 7(5) and related provisions concerning the possible introduction of individual fees

372. The CHAIR opened the discussion on Article 7(5).

373. Mr. HÖPPERGER (WIPO) introduced Article 7(5) and the two alternatives contained in the Basic Proposal.

374. Mr. RENDÓN ALGARA (Mexico) recalled that during the past five years of work by the Working Group, his Delegation had participated constructively, arguing that improvement of the system included not only the work to be done by WIPO but also the work of national offices. He added that the modernization and improvement of the Lisbon system would entail major changes in the work format of national offices, which need to have sufficient resources. Consequently, Mexico had supported the idea that each contracting party should determine the amount of national individual fees such that each country would have an efficient system for the benefit of holders of appellations of origin geographical indications, as well as the benefit of consumers themselves. In his view, such fees were not meant to generate surplus for the offices. Rather, each country can provide the elements necessary for the smooth operation of the system and cost recovery. In this regard, his Delegation was in favor of Alternative A.

375. Ms. VIEIRA LOPES (Portugal), indicating that the financing and budgeting-related aspects were essential to the operation of the Lisbon System, said that there was a need to find an integrated way of tackling those issues, bearing in mind the mandate to make the Lisbon System more attractive, so that other countries would be in a position to accede to it.

376. Ms. SANCHEZ TORRES (Cuba) said that her Delegation supported Alternative A deeming it to be one way for National Offices to cover costs.

377. Mr. SCHMIDLIN (Italy) stated that his Delegation adhered to the idea of individual fees that would help Offices to recover the costs of the processing of new applications. This was regarded as a means to increase the attractiveness of the Lisbon System and help countries to join the system. However, the burden on applicants should not increase too much because, otherwise, the system would not be attractive for them. As regards Alternative A, his Delegation failed to understand what the last sentence of sub-paragraph (a) would add to the beginning of sub-paragraph (a) and the clarification contained in sub-paragraph (b).

378. Mr. KLING (Israel) expressed the support of his Delegation for Alternative A, for the reasons already indicated by other Member States, underlining the fact that the main parameter would be the cost recovery for those Competent Authorities dealing with the processing of new applications. In that regard, he pointed out that those Competent Authorities would most likely be Intellectual Property Offices, which often operated on a trading-fund basis that had to be cost effective. Individual fees would encourage Member States to join the system and support the increased use of the system.

379. Mr. MAYAUTE VARGAS (Peru) said that his Delegation supported Alternative A because it enabled the IP Offices of Member States to apply an individual fee to cover the cost of substantive examination of registration and provide more efficient services to users. However, his Delegation deemed it important to set a limited fee which did not exceed the current registration fee of 500 Swiss francs.

380. Mr. GONDA (Hungary) indicated that his Delegation associated itself with the principle that the Lisbon System should be self-sustaining and, therefore, did not exclude the idea of reviewing the fee structure. In his Delegation's view, the budgetary balance of the system depended on certain factors, which required a careful analysis of the background of the current budget before deciding on a fundamental change in the fee structure. He further recalled that, as regards the workload of the Lisbon Registry, the main expenses of the Lisbon System in the past few years had resulted from the revision process, including the costs of the Working Group meetings, and from the automation of the Lisbon Registry. The Delegate pointed out that those expenses were occasional and not of a periodical or permanent nature. Therefore, it would be misleading to draw far-reaching conclusions from the budgetary status in recent years as justifying dramatic changes in the fee structure. As regards the costs of Competent Authorities of Contracting Parties attributable to the examination of international registrations, there might be a need to introduce a new element in the fee structure, especially in the case of self-financing Offices that covered their expenses from the fees they collected. This applied to the national authorities of Member States and newly acceding Contracting Parties alike, in particular as accession would entail a significant workload due to the re-examination of the international registrations effected prior to accession. In order to reward those efforts and to take account of the specificities of self-financing national authorities, his Delegation was ready to consider the possible introduction of individual fees. However, it was not ready to combine it with a Madrid-type designation system or the introduction of fees for the maintenance or renewal of the international registration. He concluded by expressing the preference of his Delegation for Alternative B.

381. Mr. MELENDEZ GARCIA (Costa Rica) agreed with the Delegations of Cuba, Israel, Mexico and Peru on the importance of establishing individual fees with the intention of covering costs generated by the internal examination of international registrations and, consequently, supported Alternative A.

382. Ms. LAUMONIER (France) recalled that two objectives underpinned financing of the international protection of geographical indications, namely: to make the Lisbon system attractive to future new Member States and assist intellectual property offices in financing the examination of applications; and, to avoid making the system too expensive for operators. Her Delegation preferred Alternative B, which offered the possibility of individual fees to finance the costs of the examination of the international registrations, and like the Delegation of the Italy, wondered about the relevance of the last sentence of subparagraph (a) in Alternative A.

383. Ms. KOPECKÁ (Czech Republic) stated that her Delegation was not opposed to the idea of introducing individual fees, because such fees would help national Competent Authorities to recover the costs related to the administration of the protection. Nevertheless, since individual fees would constitute an entirely new element in the Lisbon System, her Delegation supported Alternative B, which left more time to Contracting Parties to examine, discuss and consider all the aspects of such an important change.

384. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) expressed the support of his Delegation for Alternative A.

385. Ms. CHARIKHI (Algeria) considered that any intellectual property office may introduce a fee, provided that this did not undermine the interest of the treaty itself. She indicated that her Delegation accepted the principle of individual fees, and was in favor of alternative A, but stated nevertheless that subparagraph (a) of that alternative was too detailed. Her Delegation agreed with the Delegation of Italy on the last sentence of this subparagraph and proposed the deletion of the last two sentences.

386. Mr. YOSSIFOV (Bulgaria) said that his Delegation supported Alternative B for the same reasons expressed by the Delegation of the Czech Republic. While his Delegation realized that the Lisbon System needed a proper financing and that Offices handling the examination of international applications needed to be self-financed, more time was needed to fully grasp the advantages and disadvantages of the proposed approach.

387. Mr. WU (China), indicating that his Delegation supported the introduction of individual fees, expressed his preference for Alternative A, as it not only allowed the recovery of registration costs, but also referred to renewal costs.

388. Ms. MORARU (Romania) said that her Delegation accepted the possibility of introducing individual fees, since one of the objectives of the new Act was to make the Lisbon System more attractive. Consequently, it was in favor of Alternative B.

389. Ms. KIRIY (Russian Federation) recalled that her Delegation had indicated on several occasions that Contracting Parties should have the right to charge individual fees for the filing of an application and also subsequently. She was of the view that individual fees would be necessary, not only to cover the costs incurred by Offices when carrying out substantive examination, but also because, in her country, there was a liability under criminal law for violations of appellations of origin and geographical indications. It would be unfair that the corresponding financial burden be borne by the taxpayers of a country that would not receive any income from the protection of appellations of origin and geographical indications. Moreover, she did not consider it necessary to keep sub-paragraph (b) in either of the Alternatives. In addition, since keeping the appellation of origin or geographical indication in

the Registry did not involve any cost, her Delegation was of the view that the non-payment of the individual fee should not result in a removal of the appellation of origin or geographical indication from the Registry. Pointing out that the advantages resulting from the legal protection of geographical indications and appellations of origin were enjoyed by individual right holders, namely by the producers who had received the right to use the appellation of origin or geographical indication, her Delegation was of the view that those right holders should contribute to the maintenance of the system. She indicated that, under the Russian national system, the non-payment of the fee for maintaining the right had the consequences of depriving the right holder of the right to use the geographical indication or appellation of origin. However, the geographical indication or appellation of origin remained recorded in the State Registry, so that any right holder who, in the future, might wish to obtain the right to use it would be able to submit an application to the Patent Office, subject to the payment of all the applicable fees. She believed that the Russian national system was balanced and that some of its elements could be usefully employed under the Lisbon System. The Delegate, expressing her support for Alternative A without subparagraph (b), also said that her Delegation considered Alternative B as unacceptable, as it could be interpreted in different ways. For example, it could be interpreted as meaning that the Assembly could take a decision concerning the possibility for Contracting Parties to adopt individual fees. However, the proposed text did not specify whether or not the Assembly could take such a decision on an individual basis, with respect to one Contracting Party. Furthermore, the text itself stipulated that the Assembly could take a decision about individual fees only in respect of “Contracting Parties”, which meant that those countries that would not yet have acceded to the Lisbon System would not be able to count on the fact that such individual fees would also be established for them.

390. Ms. GÜVEN (Turkey), stating that her Delegation supported the introduction of individual fees, expressed her preference for Alternative A.

391. Ms. MOORE (Australia) said that her Delegation supported Alternative A, as it was of the view that the revised Lisbon Agreement should include a clear mechanism enabling Contracting Parties to charge individual fees. She considered that omitting the possibility of individual fees in the new Agreement would discourage and prevent some WIPO members from becoming members of the Lisbon System. In her view, an inclusive international filing system should enable the Offices of the Contracting Parties to collect individual fees, so that the national Competent Authorities would be able to recover the costs of processing an examination. The introduction of the possibility of individual fees in the Madrid System had facilitated an increase in its membership and, therefore, its usefulness to users who could, as a result, access a streamlined method for obtaining protection over a wider geographic area. Finally, her Delegation shared the concerns expressed by the Delegation of the Russian Federation on the operation of Alternative B.

392. Ms. SALAH (Morocco) said that her Delegation supported the introduction of individual fees to make the Lisbon system more attractive; this was consistent with one of the main objectives of the new Act. Her Delegation was in favor of Alternative A, which gave the contracting parties the option to require, or not, an individual fee for substantive examination purposes. In her view, this was not the case with Alternative B which left this option to the discretion of the Lisbon Union Assembly.

393. Ms. COTTON (United States of America) said that the ability to collect an individual fee was a fundamental issue for many prospective Contracting Parties. The possibility for requiring such a fee had to be available before accession could even be contemplated. For that reason, her Delegation opposed Alternative B, concurring with the Delegation of the Russian Federation and other Delegations that it would not be acceptable to leave the issue of whether there should be an option for prospective Contracting Parties to charge an individual fee to the Lisbon Union Assembly. Alternative A was the only viable option for prospective Contracting Parties employing a cost recovery system. Moreover, in many cases, cost recovery systems amortized the costs of processing the registration and maintaining the registration over the life of the trademark, so that a lower application fee was charged, with maintenance fees charged over the life of the trademark in order to spread the costs of operations over a longer period. Maintenance of the protection in the United States of America, and presumably in other systems, required maintaining the trademark right, the certification mark right or the collective mark right through use and maintenance fees; otherwise, the right would go abandoned. Her Delegation was, therefore, of the view that the last sentence of sub-paragraph (a) was critical for those systems to be able to charge maintenance and renewal fees at the national level. In addition, her Delegation believed that subparagraph (b) of Alternative A was important for the sake of clarity. However, in hearing the comments of the Delegation of the Russian Federation, her Delegation wondered whether that concern could possibly be addressed by a drafting change that would include a reference to “protection renounced as to the beneficiaries identified in the international registration”.

394. Mr. THÉVENOD-MOTTET (Switzerland) said that his Delegation understood the financing constraints experienced by a certain number of countries in which the authority in charge of appellations of origin and geographical indications was financially independent. Consequently, his Delegation supported introduction into the new Act, of the option for contracting parties to require an individual fee to cover the cost of examination and processing of applications for international registration. However, Alternative A was not acceptable to his Delegation because of the last sentence in sub-paragraph (a) which raises two major problems. On the one hand, it refers to maintenance requirements whereas this issue is covered in other provisions discussed by Main Committee I, but has not yet been resolved. The delegate concluded that his Delegation could not currently comment on a reference to an unresolved issue. On the other hand, it refers to a possible requirement to pay renewal fees. The delegate recalled that the current Lisbon Agreement provided for an unlimited protection period and considered that this principle should not be challenged. He then wondered how the principle of a renewal fee and, more precisely the assumption of its non-payment, could be consistent with maintaining the protection of the appellation of origin or the geographical indication for an unlimited period. He observed that the renewal procedure and the attendant fees were adapted to trademarks. However, on account of differences between trademarks and geographical indications, the concept of renewal could not apply in the same way to appellations of origin and geographical indications. He specified that in Switzerland, those two categories of rights were protected by a *sui generis* instrument for an unlimited period. He concluded that his Delegation was in favor of Alternative A, without the last sentence of sub paragraph (a).

395. Mr. LONDOÑO FERNÁNDEZ (Colombia) said that the effectiveness and validity of an appellation of origin should not be contingent on the payment of a fee as such, but on the fact that the protection conditions are maintained. In his view, the fees were a legal fiction with two objectives: the first was to ensure that the system was maintained, and so he thought that the correct term should be "maintenance" and not "renewal", and that each country should

determine its own maintenance scope as is the case in other treaties such as the Madrid System; the second objective is to adapt to national systems and, in that regard, his Delegation would be inclined to support Alternative A, since Alternative B would undermine sovereignty in each of the countries. Moreover, his Delegation understood the concern of the Delegation of Switzerland that the last phrase of Alternative A is closely related to the theme discussed a day earlier on Article 19.

396. Mr. WU (China) indicated that Article 8(1) of the Basic Proposal for the New Act, whereby the international registration should be valid indefinitely, was essential for his Delegation and considered as a basic principle. However, there was a contradiction with respect to systems based on trademarks, which provided that a trademark would be cancelled if not renewed in due time and would lapse if not used for a consecutive period of three or five years. For this reason, his Delegation suggested adding language in Article 8(1) to satisfy the use and renewal requirements of some Contracting Parties.

397. Mr. BATANGA (OAPI), recalling that the objective of the revision was to make the Lisbon system more attractive and that fees were an element of attraction, stated that OAPI welcomed the principle of individual fees. Alternative A should therefore be maintained. However, the last sentence of in Sub paragraph (a) of this alternative was problematic because it related to the term of protection of the geographical indication which is, in principle, unlimited. Accordingly, he believed that maintaining this last sentence would put an abrupt end to the protection of a geographical indication in case of non-payment of the maintenance fees or renewal fees.

398. Ms. LEE (Republic of Korea), pointing out that individual fees could cover the cost of examination in receiving countries, was of the view that this question should not be left to the Lisbon Union Assembly and should be regulated in the text of the Agreement.

399. Ms. COTTON (United States of America) said that the last sentence of subparagraph (a) in Alternative A was a declaration option for countries which needed to provide for maintenance of the right at the national level. Indicating that trademark systems had maintenance requirements at the national level, she pointed out that the non inclusion of the last sentence of subparagraph (a) in Alternative A in the New Act would exclude countries with a trademark system from joining the new instrument.

400. Ms. KIRIY (Russian Federation) said that, while her Delegation had previously contemplated, as a compromise position, the deletion of subparagraph (b) of Alternative A, it endorsed the statement made by the Delegation of the United States of America and was therefore now ready to support the maintenance of that subparagraph with a new drafting mentioning the beneficiary, along the lines suggested by the Delegation of the United States of America. Addressing the concern raised by the Delegations of France and Italy with regard to the last sentence of Alternative A, she stressed the importance of maintenance fees for her Delegation, adding that these fees were less expensive than examination fees and would not be an additional burden for producers exporting their products. She concluded by inviting Delegations to consider the objective of making the Agreement more attractive, i.e., of allowing accession by new members.

401. Mr. KLING (Israel) stated that, in line with the purpose of the revision of the Lisbon Agreement to attract additional members, his Delegation was of the view that the last sentence of subparagraph (a) of Alternative A should be maintained, as it reflected the

principle of flexibility previously evoked by Delegations. This flexibility would enable conformity with local laws, whether trademark laws or other laws, applying in various Contracting Parties.

402. Ms. FOUKS (France), indicating that this provision dealt with financing of the examination of applications for international registration, specified that such examination would not be followed to the granting of a registration or a national instrument, as is the case under the Madrid System. Moreover, she pointed out that the system of collective or certification marks was not so prevalent around the world, as her Delegation had noted that such a system did not exist in the legislations of some States. She pointed out that the United States of America and other countries protecting their own geographical indications through a certification marks system would be free to apply renewal and maintenance fees for their own geographical indications. Hence, a certification mark filed in the United States of America would be subject to national rules. If the United States of America joined the Lisbon System, non-payment of the national renewal fees would result in cancellation of the international registration. She concluded by emphasizing the fact that the discussed provision was not intended to deal with national mechanisms for recognizing and protecting national geographical indications. Rather, it concerned geographical indications presented for registration by other countries under the Lisbon Agreement.

403. The CHAIR, indicating that the terms “individual fees” had been taken from the Madrid System, where Contracting Parties could require individual fees as an alternative to a share of the revenue produced by supplementary and complementary fees, pointed out that, in the Lisbon System, no such share was envisaged for Contracting Parties. Recalling that the purpose of individual fees in the Lisbon System would be to cover the costs of the Competent Authorities of the Contracting Parties linked to the examination of the international registration, he noted that, according to some Delegations, the costs in conjunction with the maintenance or renewal would also be covered. He also noted that, while the idea to accommodate the situation of Contracting Parties where the Competent Authority was a self-financed institution seemed generally accepted, the modalities for ensuring cost coverage for those Competent Authorities still needed to be considered. He wondered how the proposals for establishing maintenance fees at the international level related to the last sentence of subparagraph (a) of Alternative A. He recalled that, in the Madrid System, renewal took place at the international level and that a Contracting Party which had opted for an individual fee would receive such an individual fee at the time of the renewal of the international registration at the International Bureau. He wondered whether the Committee intended to provide for a double requirement in the Lisbon System, by establishing a renewal requirement at the international level and a separate renewal requirement at the national level in Contracting Parties opting for an individual fee. He also wondered whether the draft Act was the appropriate place to address the issue of national requirements concerning the maintenance, renewal or use of appellations of origin and geographical indications, applicable under the law of a given Contracting Party. Considering that individual fees would pave the way for accession by new Member States or intergovernmental organizations, as they would make the system more attractive for Contracting Parties and their Competent Authorities, he believed that users would be in a better position to obtain protection in the newly acceding Contracting Parties that would charge individual fees, and at a lower cost than through the national route. Finally, he sought clarification from the Delegations that had expressed concerns about subparagraph (b) of Alternative A, as he considered that their problem was not clear.

404. Mr. SCHMIDLIN (Italy) said that his Delegation's preference for the deletion of the last sentence of subparagraph (a) of Alternative A was not meant to exclude trademark systems from joining the Lisbon System.

405. Mr. VITTORI (oriGIn) said that ORIGIN was in favor of exploring the option of individual fees, so as to have an international registry attractive for a variety of countries. Referring to the limited financial resources of producers in developing countries, he stressed the importance of limiting the amounts of the fees provided for in Alternative A and invited Delegations to consider this issue from a pragmatic perspective.

406. Mr. CURCHOD (CEIPI) indicated that CEIPI supported the introduction of individual fees into the Lisbon System. It was of the view that Alternative B did not offer sufficient guarantees to States that were not members of the Lisbon Union and could discourage Member States of the Union from ratifying the new Act. Alternative A was therefore preferable. He pointed out that the penultimate sentence in sub-paragraph (a) of this alternative ensured that contracting parties do not set the individual fee at an excessively high amount. He also felt that the wording of the last sentence in sub-paragraph (a) of this alternative should be reviewed, if it is maintained, based on discussions on Articles 7(3), 8 and 12. He concluded that it would be regrettable for the solutions to these issues to exclude the accession of countries protecting appellations of origin and geographical indications through the trademark system.

407. Ms. SCHERB (HEP), indicating that HEP wished for the individual fee to be maintained because it was fair for the Offices to cover their costs, stated that a maximum amount should, however, be set.

408. Ms. SAGBO (Togo) noted that producers in the OAPI Member countries, which are developing countries, did not usually have sufficient financial means to register their geographical indications. However, her Delegation acknowledged that the Lisbon system needed to be maintained and was therefore not opposed to the introduction of fees. She concluded by supporting the statement made by the representative of HEP that the amounts be reviewed for developing countries.

409. The CHAIR observed that the issue of maintaining or renewing protection of registered appellations of origin and geographical indications still had to be clarified. This issue was of major importance and a solution should be found that would not exclude trademark law countries, but that could, at the same time, be reconciled with the principles for the protection of appellations of origin and geographical indications. In light of the discussion, he concluded that Alternative A would be taken as the basis for further work by the Committee, while acknowledging that its text required certain amendments.

Item (iv): Article 7(3), Article 8(3), Article 24(3) and related provisions concerning the possible introduction of maintenance fees

Item (v): The possible re introduction of the provisions of the current Lisbon Agreement dealing with contributions by members of the Lisbon Union

Item (xvii): The amount of fees in Rule 8(1)

410. The CHAIR requested the Secretariat to introduce the remaining issues under Cluster D.

411. Mr. HÖPPERGER (WIPO) introduced Articles 8(3) and 7(3), as well as Rule 8(1). He then introduced Article 24(3)(vi), indicating that there was an overlap between the work of Main Committee I and Main Committee II concerning this provision. He recalled that, in 1994, a common contribution system had been adopted by the WIPO General Assembly, which had decided to make the necessary institutional changes so as to align the financing provisions of all WIPO unions. In 2003, a series of decisions had been taken horizontally by the relevant WIPO union Assemblies in order to introduce the common contribution system into the constitutional structure of the Organization. Article 24(3)(vi) of the Basic Proposal, which was bracketed and concerned the issue of whether a provision for contributions of Contracting Parties should be reintroduced, did not take into consideration the 2003 decision. He informed the Committee that the Secretariat was preparing a text for the consideration of Main Committee II that would reflect the 2003 decision of the Lisbon Union Assembly amending Article 11 of the Lisbon Agreement. Although that amendment had not yet entered into force, he pointed out that deleting item (vi) of Article 24(3) would constitute a departure from the decision that the Lisbon Union Assembly had taken in 2003.

412. The CHAIR opened the discussion on these issues.

413. Mr. GONDA (Hungary) said that the Committee should look into the reasons of the current budgetary situation, before taking a decision that might fundamentally change the fee structure. His Delegation was of the opinion that introducing maintenance or renewal fees would be contrary to the principles of the protection of geographical indications and appellations of origin, because it would undermine one of the basic features of the system, namely that protection was not limited in time. Consequently, his Delegation was not in the position to accept the introduction of maintenance or renewal fees in any form, and could therefore only support Alternative C of Article 7(3), which contained no provision on maintenance fees.

414. Mr. SCHMIDLIN (Italy) said that his Delegation considered that maintenance fees were related to the financial situation and the cost effectiveness of the Lisbon Union. He concurred with the Delegation of Hungary in that proper consideration of the financial situation of the Lisbon Union was needed before altering the structure of the fees. In his view, it was necessary to know the fixed costs and to consider other factors, such as the impact of the automation project or the amount of savings. Acknowledging that the Secretariat had provided some information at the last meeting of the Working Group and during the Lisbon Union Assembly, he noted, however, that this information was not enough. Thus, his Delegation considered that it was crucial to have a cost-benefit analysis for the introduction of a new fee, as well as an estimation of the likely increase in applications and its impact on the costs. Stressing the view that the system should be attractive for new countries, but also for applicants, his Delegation considered that the burden on applicants should not be increased too much, especially in view of the fact that the new system would also apply to developing countries and their businesses. If the system would establish a tax that would be too expensive for applicants, nobody would apply and the financial situation would not improve. His Delegation was ready to have a frank discussion, but could not accept, at this stage, to pave the way for maintenance fees and, therefore, preferred Alternative C of Article 7(3).

415. Mr. KLING (Israel) said that his Delegation considered the Lisbon Agreement as a service-providing Agreement, which should attempt to be self-sustainable, in conformity with

other WIPO administered registration services. He believed that cross subsidies should be averted as far as possible. Therefore, his Delegation considered it logical to establish a concrete arrangement for a maintenance fee. Although his Delegation concurred with the observations of the Delegation of Italy on the various questions that needed to be addressed, he believed that those issues could be considered by Main Committee II, as they were not related to the substantive question of whether or not a maintenance fee should be established. Therefore, his Delegation supported Alternative A, whereby the Assembly must establish a fee. As a fallback, his Delegation could also support Alternative B, whereby the Assembly could establish a fee and more time would be available for deliberations on the exact amount of the fees. Moreover, the language of both Alternatives A and B required amendment, so as to prevent an ad hoc fee setting. The fee should be set at a fixed level and not be changed every time that the expenses would change. He explained that the latter part of Alternative A of Article 7(3) referred to a level determined by the extent to which receipts indicated in Article 24(3)(i) and (iii) would not suffice to cover the expenses of the Special Union. This would require a constant review of the matter, which was undesirable. In addition, his Delegation supported the inclusion of the language within brackets in Article 8(3) on the consequences of not paying the fees. Finally, his Delegation did not agree with the position of the Delegation of Italy, which considered that the Committee was dealing with a tax. The Committee was rather dealing with fees and cost recovery for WIPO. As to Article 24(3)(vi), he suggested that, if such an arrangement was revisited, it should be considered on a pro-rated basis, in accordance with the amount of usage of the system by Contracting Parties.

416. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) stated that, regarding Article 7(3), his Delegation associated itself with the position expressed by the Delegations of Hungary and Italy. Due to the differences in nature between geographical indications and appellations of origin, on the one hand, and trademarks, on the other hand, his Delegation could not support the introduction of a maintenance fee and, therefore, preferred Alternative C.

417. Ms. KOPECKÁ (Czech Republic) said that her Delegation associated itself with the statements made by the Delegations of Hungary and Italy in support of Alternative C.

418. Ms. VIEIRA LOPES (Portugal) supported Alternative C and concurred with the views set forth by the Delegations of Hungary and Italy.

419. Ms. FOUKS (France) indicated that her Delegation aligned itself with the Delegations that supported Alternative C of Article 7(3) and also agreed with the opinions expressed on the nature of appellations of origin and geographical indications.

420. Mr. YOSSIFOV (Bulgaria) said that his Delegation also supported Alternative C and associated itself with the statements made by the Delegations of the Czech Republic, France, Hungary, Iran (Islamic Republic of), Italy and Portugal. He added that his Delegation agreed with the questions raised by the Delegation of Italy in respect of the financing of the Lisbon System and endorsed the view that a financial cost and benefit analysis was needed, in order to allow Member States to determine whether the best way was to finance through fees or through contributions by Member States. His Delegation would expect the Secretariat to initiate such a discussion at the next Lisbon Union Assembly.

421. Ms. CHARIKHI (Algeria) said that her Delegation was in favor of Alternative C of Article 7(3), not wishing for the establishment of new fees that would increase the burden on producers. She believed that a maintenance fee would render the Lisbon System less

attractive to developing countries, considering that existing fees and the financial burden on developing country producers were relatively heavy.

422. Ms. KOUMBY MISSAMBO (Gabon), supporting the arguments of the Delegations of Algeria and Italy, expressed the preference of her Delegation for Alternative C of Article 7(3).

423. Ms. ROGAČ (Montenegro) said that her Delegation was of the view that the introduction of maintenance fees would be contrary to the system of protection of geographical indications and appellations of origin, as embedded in the current Lisbon Agreement. Furthermore, the requirement to pay a maintenance fee on an ad hoc basis would lead to legal uncertainty. Therefore, her Delegation supported Alternative C.

424. Ms. SAGBO (Togo) indicated that her Delegation aligned itself with the Delegations which supported Alternative C.

425. Ms. DIAZ MORENO (Nicaragua) said that the maintenance fees would be a burden on owners in developing countries. Therefore, his Delegation supported Alternative C.

426. Mr. KLINKA (Slovakia) expressed the support of his Delegation for Alternative C.

427. Mr. MELENDEZ GARCIA (Costa Rica) said that the Delegation of Costa Rica supported Alternative C.

428. Ms. BILEN KATIĆ (Serbia) endorsed the arguments presented by the Delegations of Hungary and Italy and supported Alternative C.

429. Ms. MORARU (Romania) said that her Delegation was in favor of Alternative C because it could not accept the introduction of a maintenance fee that is at variance with the Lisbon Agreement principle that protection is unlimited.

430. Ms. COTTON (United States of America) stated that her Delegation supported Alternative A of Article 7(3), as well as retaining the text in Article 8(3) concerning the effect of non-payment of the maintenance fee, and the text in Article 24(3)(vi) regarding contributions. Her Delegation aligned itself with the intervention of the Delegation of Israel and appreciated the idea of a proportionality requirement related to the number of registrations that a particular Contracting Party had in the system. Her Delegation was also in favor of the proposed idea that the Lisbon Assembly should have a detailed report regarding the cost of the system. However, her Delegation considered that this did not preclude the Committee from defining principles in the text regarding financial sustainability for the Lisbon System, as the system could not legitimately continue to rely on other WIPO members and other more widely adopted registration systems to subsidize the acquisition of geographical indications, which were private property rights. Her Delegation considered that holders who benefited from using the Lisbon System, or their governments, were the ones who should pay for the costs of obtaining protection. Although the Lisbon Union members considered that new accessions would contribute to an increase in revenue, her Delegation was not convinced that the text would create enough flexibility for new Contracting Parties to increase the number of applications that would theoretically fund the operations of the system. Making the maintenance fee mandatory would ensure a reliable income stream that would sustain the system over the longer term. A one-time application fee did not create a sustainable revenue source to cover administration of the system, including information

technology and related costs. An ad hoc maintenance fee, to be paid by holders of international registrations when fee collections were down and did not cover the expenses as required in Article 24(4), raised difficult notice concerns as well as budgeting concerns for holders, and would likely result in unintended cancellations of international registrations. Moreover, the costs of administering an ad hoc system would likely be higher than the cost of a regularized maintenance fee requirement. Considering this, her Delegation had started looking at contributions as a possible funding source for purposes of flexibility and finding the right balance between the level of international registration and maintenance fees as well as proportional contributions. The contributions referred to in Article 24(3)(vi) should probably remain in the text as a funding source, because they existed as a funding source in the original Agreement, as well as in the Act of 1967. If contributions were not contained in the New Act as a funding source, any deficit would have to be addressed by contributions of the original Lisbon members. For that reason, her Delegation believed that keeping contributions in the New Act would be fairer.

431. Ms. KOUTIBOBO NNOKO (Cameroon) said that her Delegation understood the concern of greater financial autonomy for the Lisbon system. However, it believed that such autonomy depended on the number of members who join the system. She shared the opinion of the Delegations of Gabon and Togo that a maintenance fee would create legal uncertainty for their systems and be off-putting to their producers and their States. She therefore expressed her Delegation's support for Alternative C.

432. Mr. KUMER (United Kingdom) said that it was important to strive for a financially sustainable Lisbon System. Therefore, his Delegation was willing to discuss any potential new mechanism that would achieve this goal. After hearing the views of delegates on this subject, his Delegation was of the view that it might be worth exploring options that dealt with payment of fees and with the indefinite nature of geographical indications. In addition, his Delegation hoped that Lisbon members were still working towards the objectives set by the 2003 Assembly decision. Therefore, his Delegation supported removing the brackets and retaining the text in Article 24(3)(vi).

433. Mr. WIBOWO (Indonesia) expressed the preference of his Delegation for Alternative C of Article 7(3), seconding the interventions made in this respect by the Delegations of Algeria, Bulgaria, the Czech Republic, France, Gabon, Hungary, Iran (Islamic Republic of), Italy, Portugal and other countries. Considering that this norm-setting process should comply with the Development Agenda Recommendations, in particular with paragraph 15 of Cluster B, he indicated that his Delegation supported the statement made by the Delegation of Italy concerning a balance between costs and benefits. In his view, cost elements should not be a burden for developing countries and LDCs, in order for them to join the revised Lisbon System.

434. Mr. FUSHIMI (Japan) said that the costs required to support the Lisbon Union should be covered by its members, which was currently not the case. For this reason, his Delegation supported the introduction of a maintenance fee, which was expected to help achieving financial sustainability, as well as the removal of the brackets in Article 24(3)(vi).

435. Ms. SALAH (Morocco), aligning herself with the Delegations that supported Alternative C of Article 7(3), shared their arguments on the nature of appellations of origin and geographical indications. Her Delegation also supported the principle of reduced fees, particularly for developing countries, as provided for in Article 7(4).

436. Ms. KIRIY (Russian Federation), referring to Article 7(3), said that her Delegation was also concerned about the loss of attractiveness of the Lisbon System, which was linked to its advantages for users and new members of the system. She underlined that the system allowed for important savings for applicants, who would no longer have to pay fees to lawyers and other intermediaries to ensure protection of their rights abroad. Therefore, her Delegation preferred Alternative B of Article 7(3). As regards Article 24(3), her Delegation considered that the Union should ensure that the burden fell upon those who received benefits from the Lisbon System. Therefore, her Delegation was in favor of establishing contributions as a preferable alternative to maintenance fees.

437. The CHAIR adjourned the meeting.

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Item (iv): Article 7(3), Article 8(3), Article 24(3) and related provisions concerning the possible introduction of maintenance fees (cont'd)

Item (v): The possible re introduction of the provisions of the current Lisbon Agreement dealing with contributions by members of the Lisbon Union (cont'd)

Item (xvii): The amount of fees in Rule 8(1) (cont'd)

438. The CHAIR resumed the work of Main Committee I on the pending issues of Cluster D.

439. Mr. RENDON ALGARA (Mexico) said that, given the deficit that had dogged the Lisbon System over the past six years, his Delegation considered that the international registration system had to be adapted to the current needs of the system and, accordingly, had examined the proposals for dealing with the budget deficit, contained in the draft new Act. As regards the proposal in Article 7(3)(a) and (b) on maintenance fees, there was no clarity as to what would be done in the first instance if the financing of the Union mentioned in Article 24(3)(i) and (iii) to (v) were not enough to cover the expenses of the Union. Once this point had been clarified, her Delegation believed that it was necessary to provide for balanced measures that prevent a deficit within the Lisbon system, but takes into account the interests of rights holders to promote rather than discourage international registration. With regard to the proposal in Article 24(3)(vi), his Delegation deemed it appropriate to maintain the current language, although this provision had not been effective in the past, so that it would be up to the Assembly of the Union to analyze this possibility as a solution for aiding the Lisbon system when its revenue is not enough to cover costs. As concerns the maintenance fees in Article 7(3), his Delegation considered that such a measure should be analyzed more thoroughly to avoid creating legal uncertainty for rights holders, bearing in mind that various national systems do not require the payment of a maintenance fee. Consequently, the Delegation was not in a position to take a decision on the maintenance fees proposed in Article 7(3) and was in favor of Alternative C. In conclusion, his Delegation supported

maintaining the proposal in Article 24(3)(vi), with the intention of maintaining an outlet for saving the sustainability of the System.

440. Mr. BATANGA (EU) declared that the introduction of maintenance fees was likely to create legal uncertainty and therefore supported Alternative C. Noting that each international registration system ought to be self-financing, the delegate, however, recalled that owners of geographical indications, who come from rural communities, could not be compared with holders of trademarks or patents who are companies with a firm foundation. Hence, underscoring OAPI's wish to promote rural development through the protection of geographical indications, the delegate considered that it was necessary to take account of the specificity of geographical indications and be more flexible in applying the principle of self-financing of the system.

441. Mr. THÉVENOD-MOTTET (Switzerland) said that his Delegation supported measures aimed at ensuring that the system is financially self-sufficient, including measures that would increase revenue, as well as any measures that generate savings and, where possible, measures to improve efficiency, especially through synergies. In this regard, he felt that it would be relevant to consider this issue based on two criteria. First of all, the criterion of compliance with the essential principles of the Lisbon system which give it its value-added and therefore its attractiveness to beneficiaries of appellations of origin and geographical indications; such attractiveness was itself a crucial condition for ensuring the financial sustainability of the system. The unlimited duration of protection appeared to be the most important of these principles. In this regard, the possible consequences of non-payment of a fee to maintain the international registration was highly problematic and had led his Delegation to reject the idea of introducing such a fee. Furthermore, he considered that the administrative burden of managing such a fee, both for the International Bureau and for Contracting Parties whose administrative costs would also be increased, were highly likely to undermine its relevance. Ultimately, such a fee could be useful primarily to finance its own collection costs. Consequently, with regard to Article 7(3), his Delegation was in favor of Alternative C. The delegate added that the other criterion to take into account was that of an opportune moment to define and quantify the measures to be adopted, considering that the status of the system's costs and revenue, after the revision becomes effective, is not yet known or reasonably ascertainable. Consequently, there was need to be cautious at this stage when making changes to the financing of the system, and especially to avoid changing existing legal principles, as this might turn out to be useless in the medium-term. In conclusion, he deemed it important to find an immediate solution involving funding of the system by beneficiaries and contracting parties, a solution that remained adaptable to actual financial needs, and did not undermine the legal principles of the Lisbon Agreement, including the unlimited term of protection. Recognizing the special nature of appellations of origin and geographical indications, his Delegation believed that it was necessary to be innovative in order to develop a financing system that was adaptive, fair and sustainable.

442. Mr. WU (China) said that, if there was no interdependency between the period of validity of a registration and the maintenance fee, his Delegation would support the principle of introducing the maintenance fee.

443. Mr. KIM (Republic of Korea) said that, with regard to Article 7(3), his Delegation aligned itself with the statements made by the Delegations of Australia, Israel, Japan and the United States of America and supported Alternative A. Alternative A would not create any

negative effect on the system, since it would be up to the Lisbon Union Assembly to decide the amount of the fees, depending on the financial situation of the Lisbon System.

444. Mr. CURCHOD (CEIPI) observed that several Delegations had insisted on the fact that it was difficult to predict what would be the financial situation of the Lisbon Union when the new Act would come into force, and for that reason these Delegations had supported Alternative C. The Representative noted, however, that the consequence of excluding maintenance fees from the new Act would be that it may not be possible to introduce such fees in future if the need arose or if the arguments pertaining to philosophical aspects or the tradition of the Lisbon system took a different turn. Therefore, it was important to realize that, if Alternative C were adopted, it would become impossible to introduce the possibility of charging maintenance fees, without a new revision of the Lisbon Agreement which would require the convening of a diplomatic conference. In this regard, while leaving this issue to the discretion of Governments, he noted that Alternative B offered great flexibility, since it neither required nor excluded the possibility of establishing maintenance fees.

445. Ms. SCHERB (HEP) noted that owners of geographical indications from the rural world, could not be placed on the same level as trademark owners or patent holders. For that reason, HEP was in favor of Alternative C and, consequently, of a flexible, fair and sustainable system.

446. Mr. KLING (Israel) said that Alternatives A and B of Article 7(3) provided for more flexibility than Alternative C. Nothing in Article 7 required the actual beneficiary to bear the brunt of the fees, and a Contracting Party could elect to pay all fees, depending on whether it had a private or public system. He recalled that in many cases the Contracting Party itself was the owner of the right.

447. The CHAIR, pointing out that it was the responsibility of the members of the Lisbon Union to guarantee the financial sustainability of the Lisbon System, noted the willingness of these members to act in and through the Assembly and take measures to remedy any financial imbalance of the system. Although there were quite a few Delegations supporting the introduction of maintenance fees, i.e., Alternatives A or B of Article 7(3), there was also opposition, as expressed by a large number of Member and Observer Delegations to a provision introducing explicitly maintenance fees or a provision providing for that possibility. He also noted a growing support for including Article 24(3)(vi) in the Basic Proposal, pointing out that there might be little difference between maintenance fees paid by the Contracting Party concerned in the name or on behalf of the beneficiaries and the contributions to be paid by Contracting Parties, especially if those contributions were proportional to the number of international registrations filed by that Contracting Party. He, thus, proposed to ask Main Committee II to look into the modalities of such a contribution system, and invited the Secretariat to inform Main Committee I on the current financial situation of the Lisbon Union.

448. Mr. HÖPPERGER (WIPO) drew the attention of Main Committee I to the fact that audited annual financial reports and financial statements were being published on the WIPO website on a regular yearly basis. Those financial reports and financial statements contained, in particular, information on the revenue, the expenses and the reserves by segment, with reference to the various contribution unions of the Organization. They also gave a precise overview on how the income had been derived and where the expenditures had gone, as well as general information of the overall situation, in particular, whether or not a specific union

was in deficit and if so, since when. In addition, he drew the attention of the Committee to Document LI/A/31/2, published for the 2014 session of the Lisbon Union Assembly, containing a proposal to update the Fee Schedule under Rule 23 of the Regulations under the Lisbon Agreement.

Item (ii): The content of Article 2(2) and Article 5(4) concerning trans-border geographical areas of origin (cont'd)

Article 5(3): Application Filed Directly

Rule 15(2): Modifications

449. The CHAIR introduced the proposals to amend Articles 2(2), 5(3) and (4) and Rule 15, as contained in Non-Paper No. 2. He explained that the amendment of Rule 15 was proposed to cover the case where a joint application in respect of a trans-border geographical area concerned an existing international registration made previously by one of the adjacent Contracting Parties, which did not cover the entire trans-border geographical area.

450. Mr. KLINKA (Slovakia) endorsed all the proposals contained in Non-Paper No. 2.

451. Ms. CHARIKHI (Algeria) said that Article 2, as currently drafted, did not pose any problem to her Delegation. However, regarding Article 5, she still had some difficulties discerning the connection between an application filed directly by the beneficiaries or a legal entity and the fact that this is without prejudice in case of a trans-border application. Hence, she requested some explanations in order to react to the amendment proposed by the Chair. Concerning Article 5(4), she pointed out that the principle in itself remained the same in the proposed text and therefore expressed the wish that a clear reference be made to the agreement that must be established between the contracting parties concerned. To that end, she proposed the introduction of the terms "by mutual agreement" in Article 5(4), which would then read as follows: "In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent contracting parties may, by mutual agreement, file an application jointly, through a commonly designated Competent Authority".

452. Mr. FERNANDEZ LONDONO (Colombia) wondered whether, in relation to Rule 15(2)(b), it was not necessary to also indicate that beneficiaries or the legal entity referred to in Article 5(2) could file the amendment in the case of Article 5(3).

453. Mr. GONDA (Hungary) said that his Delegation endorsed the proposals contained in Non-Paper No. 2, considering that the new text clarified the matter.

454. Mr. HALL ALLEN (European Union) said that his Delegation was of the view that the proposal from the Delegation of Algeria deserved to be considered.

455. The CHAIR, with respect to the concern raised by the Delegation of Algeria, proposed to amend the text of Article 5(4), to the effect that it would indicate that Contracting Parties may agree to file an application jointly through a commonly designated Competent Authority, under the terms and conditions agreed by them or in accordance with the terms and conditions contained in their agreement. With respect to the question raised by the Delegation of Colombia on Rule 15(2)(b), he said that, in the case of applications for trans-border appellations of origin or geographical indications, could not be filed by the beneficiaries or natural or legal persons having legal standing to assert the rights. Insofar as changes could

also occur in the list of beneficiaries, he said that it was worth to consider amending Rule 15(1)(ii) and, as a consequence, Rule 15(2)(b).

456. Mr. LONDOÑO FERNÁNDEZ (Colombia) presented the example of an international registration in the name of an association or legal entity in a trans-border area, but with protection only for that part of the geographical area of the country which is party to the Act. Subsequently, the other country adheres to the Act, and also authorizes the Association or legal entity to file the amendment. In his judgment and considering how the proposal is worded, it would seem as if, although the registration is in the name of the association, only the parties, meaning the States, and not the beneficiaries or natural person or legal entity referred to in Article 5(3), would be able to file the amendment.

457. The CHAIR reiterated that Article 5(4) as contained in Non-Paper No. 2 excluded the possibility of filing joint applications directly by beneficiaries or natural or legal persons having legal standing to assert the rights and that Rule 15 also followed that approach.

458. Mr. CURCHOD (CEIPI) pointed out that it was necessary to harmonize the terms “a natural person or legal entity” in Article 5(3) and rule 15(2) and align the terminology in Non-Paper No. 2 with that of Non-Paper No. 3. As regards the English text of Chair Non-Paper No. 3, he indicated that the terms “a natural or legal person” were usually not those used in WIPO treaties, which rather refer to “natural person or legal entity”. He recalled that it had been considered necessary, in the context of the Madrid system, to give a very broad definition of the concept of legal entity to take account of the particularities of certain national legislations, including German and Swiss laws which provide for entities that do not have a legal personality but are nevertheless able to acquire rights, bear obligations and institute judicial proceedings. Thus, given the interest of Switzerland and Germany in joining the new Act, he felt that it would be necessary to adopt a definition within the meaning of Article 1, that would take into account the legal specificities of the Swiss and German systems.

459. The CHAIR noted that the final formulation of Article 5(2)(ii) would be used in a consistent manner throughout the text.

460. Ms. CHARIKHI (Algeria), referring to the proposal made by the Chair, said that his Delegation's concerns were to clarify that the requirements and conditions of a joint application should be established in an agreement between the contracting parties. Indicating the need to be flexible as to the terminology used in the text to refer to a clear agreement between the two parties, she requested the Chairman to submit a written proposal.

461. Mr. POLINER (Israel) recalled that Explanatory Note 5.04 in Document LI/DC/5 clarified that, with regard to a trans-border geographical area, an application could be filed individually or jointly. He sought clarification on whether the addition of the words “or a part thereof” in Article 2(2) was intended to clarify that a country adjacent to a trans-border area could file individually with respect to its portion of the trans-border area, with no prejudice to a possible application by the other side of the trans-border area for the other portion of the area, and whether the words “subject to Article 5(4)” after the comma were not contradictory to that understanding.

462. Mr. MAYAUTE VARGAS (Peru) said that his Delegation agreed with the proposals made and supported the contribution of the Delegation of Algeria on Article 5(4).

463. The CHAIR, taking into account the comment made by the Delegation of Israel and the suggestion made by the Delegation of Algeria, proposed a new drafting of Article 5(4), as follows: “In case of a geographical area of origin consisting of a trans-border geographical area, the adjacent Contracting Parties may act individually with respect to the part of the trans-border geographical area situated in their territory or may, in accordance with their agreement, file an application jointly through a commonly designated Competent Authority.”

464. Ms. CHARIKHI (Algeria) was of the view that Article 5(1), which clearly showed that each country had the right to file an application, must remain separate from article 5(4) which concerns a trans-border area where it is possible to file a joint application subject to a contract.

465. The CHAIR proposed to delete the last words in Article 2(2), “subject to Article 5(4)”, in order to meet the concerns of the Delegation of Israel.

466. Mr. POLINER (Israel) confirmed that the Chair’s proposal would solve his Delegation’s concern.

467. The CHAIR concluded that the following changes would be introduced in the text contained in Non-Paper No. 2: the terminology with respect to natural or legal persons or entities would be aligned throughout the different provisions; the words “subject to Article 5(4)” in Article 2(2) would be deleted; and a reference to an agreement between the Contracting Parties would be added in Article 5(4). Rule 15 would also be adapted, so as to ensure that the terminology was used in a consistent manner.

468. Mr. MAYAUTE VARGAS (Peru) reiterated his Delegation's support for the suggestions made by the Chair.

469. Mr. KLINKA (Slovakia) requested clarification concerning the form of the agreement referred to in Article 5(4).

470. The CHAIR said that the agreement could take any form decided by the States concerned.

Item (iii): the entitlement to file an application under Article 5(2) (contn’d)
Rule 5(2) and (4)

471. The CHAIR introduced the proposals for Article 5(2), Rule 5(2) and Rule 5(4), as contained in Non-Paper No. 3.

472. Ms. COTTON (United States of America), noting that the proposals submitted by the Delegation of the United States of America on February 1, 2015 had not been reflected in the proposed texts, said that the problem remained in Article 5(2), as the applicants listed in that provision might not be the owners or holders of the exclusive right. This posed difficulties in those countries that required the owner to be clearly identified in any national registration certificate or title bestowed through an examination process. Without such identification, border measures or enforcement actions could not be initiated. Expressing the same concern with respect to Rule 5(4)(a) and (b), she proposed to replace the reference to “natural or legal person in whose name the application is filed under Article 5.2(ii)” in those two paragraphs by a reference to the “owner”. She further proposed to delete the words “under its trademark law” in Rule 5(4)(a) and the words “subject to Rule 6” in Rule 5(4)(b), as the irregularity

procedure might not work in that instance. Stressing the fact that those changes were necessary to ensure that geographical indication holders would be able to legally enforce their rights without having their standing questioned by national courts, she concluded that the provision under discussion was extremely important to the United States of America and other countries that had registration-based systems at the national level.

473. Ms. FOUKS (France) said that the Chair's proposal on Article 5(2) was perfectly acceptable to her Delegation. Concerning sub-paragraph (4), she expressed her perplexity over the position adopted by the Delegation of the United States of America because, given the way it was formulated, it would entail extending to all the countries the requirement of a signature by an owner or holder of the appellation of origin or geographical indication, considering that there was only one international application. Thus, the system would go beyond what had been envisaged initially. Indicating that French law did not recognize the concept of owner of a geographical indication or an appellation of origin, she said it would be difficult for France to meet such an obligation.

474. Mr. WU (China), indicating that, according to his country's national legislation, only a legal entity could seek protection for an appellation of origin, expressed his Delegation's concern over the replacement of the term "legal entity" by "natural person" in Article 5(2).

475. Ms. SCHERB (HEP) suggested that the text should stop after the words "competent authority", thus giving the authorities free choice to act on behalf of the applicants.

476. Mr. VITTORI (oriGIn) expressed the view that the proposed language of Article 5(2) was a reasonable compromise. With respect to the signature by the owner, he said that many geographical indications groups had sought certification marks in the United States of America and had probably signed their applications, although according to their national laws they were not owners, but beneficiaries. He, therefore, assumed that the problem could be overcome in practice in an international system, as it had been overcome in national systems.

477. Ms. CHARIKHI (Algeria) said that the text of Article 5.2, as proposed in Non-Paper No. 3, was acceptable to her Delegation. On Rule 5(4), she said she wanted more time to assimilate the concepts identified in this paragraph, while indicating that her Delegation might support a wording focused on the fact that a geographical indication is a collective right.

478. The Chair proposed to revert to Article 5(2) and Rule 5(2) and (4) later.

Item (ix) : the content of Article 12 concerning protection against becoming generic (cont'd)

479. The CHAIR proposed to turn to Non-Paper No. 4, concerning the content of Article 12. He recalled that extensive discussion had taken place on that provision, which should be read in conjunction with Article 8(1) establishing the principle that an international registration should be valid indefinitely, on the understanding that the protection of a registered geographical indication or appellation of origin should no longer be required, if the indication or appellation in question was no longer protected in the Contracting Party of Origin.

480. Ms. CHARIKHI (Algeria) wondered whether the acquisition of generic character was conditional on the fact that the appellation of origin or the geographical indication becomes generic first of all in the Contracting Party of origin. Her Delegation was of the view that this

article must be clarified, stating that so long as the appellation of origin or the geographical indication is not considered as having become generic in the Contracting Party of origin, it cannot become generic in other contracting parties. She would therefore like to introduce the words "of the Contracting Party of origin" after the words "as long as ... law requirements".

481. Ms. FOUKS (France) stated that the proposed text had simplifications and improvements in its wording. She indicated that, after reflection, the expression "cannot be considered to have become generic" could be accepted by her Delegation. She stressed however that her Delegation was still considering the final addition which refers to an unidentified law, but added that the clarification proposed by the Delegation of Algeria on reference to the law of the Contracting Party of origin was relevant and a positive point for her Delegation.

482. The CHAIR recalled that, under the current version of Article 6 of the Lisbon Agreement, the protection against becoming generic was subject to the requirement that the appellation of origin should be protected in the country of origin. In the New Act, that requirement had been mirrored in Article 8(1) of the Basic Proposal. The text of Article 12 as contained in Non-Paper No. 4 started with the words "Subject to the provisions of this Act", which also meant compliance with Article 8(1). Therefore, the requirement had been maintained and there was protection against becoming generic as long as the indication or the denomination was protected in the Contracting Party of Origin. With regard to the proposal by the Delegation of Algeria, the Chair wondered whether the inclusion of the text proposed would not be redundant, as Article 8(1) already referred to the protection in the Contracting Party of Origin. The Chair noted that the last part of the provision, referring to the law of a Contracting Party, was intended to cover the law of Contracting Parties other than the Contracting Party of Origin. Therefore, the protection against becoming generic would be subject to two conditions. The first was that the geographical indication or the appellation of origin should be protected, the protection being dependent on the protection in the Contracting Party of Origin under Article 8(1). The second was that the requirements regarding maintenance of protection under the law of the Contracting Party concerned (other than the Contracting Party of Origin) should be met.

483. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) expressed his support for the text of Article 12, as contained in Non-Paper No. 4.

484. Mr. SCHMIDLIN (Italy), noting that new elements had appeared in the formulation of Article 12, said that his Delegation needed more time to consider this provision and its impact, and therefore reserved its position on the subject.

485. Mr. YOSSIFOV (Bulgaria) wondered if the provision intended to say that, if the requirements under the law of the Contracting Party where the appellation of origin had been registered were not met, the appellation could become generic, even though it had not become generic in the Contracting Party of Origin. If so, he preferred a statement that an appellation of origin could not become generic as long as it was protected and was not generic in the Contracting Party of Origin.

486. The CHAIR confirmed that the last part of the sentence, starting with the words "in a Contracting Party", was new and admitted the possibility of an appellation of origin or geographical indication to become generic in a Contracting Party in spite of the fact that it was protected and was not generic in the Contracting Party of Origin. He observed that, if the

aim was to provide for protection of an indication against becoming generic in any Contracting Party as long as it was protected in the Contracting Party of Origin, the last part of the sentence should be deleted.

487. Mr. KLING (Israel) welcomed the text of Article 12 presented in Non-Paper No. 4, considering that the suggested language reflected the spirit of inclusiveness and merged the gaps between the various legislations.

488. Mr. RAMALHEIRA (Portugal), aligning himself with the statements made by the Delegations of Bulgaria and Italy, expressed his Delegation's reservation with regard to the text and his doubts as to the consistency of the proposed language with Article 8(1).

489. Mr. RENDÓN ALGARA (Mexico) said that his Delegation supported the Chair's proposal.

490. Mr. VASSILAKIS (European Union) did not wish to speak on the reformulation of the text but wished, however, to make a few legal clarifications and insist on the fundamental problem of genericity. He said that genericity was closely related to the principle of territoriality since an appellation may be generic in a given territory without necessarily being so in another territory. Depending on the specific circumstances of each territory there were potential differences. Hence, when a Contracting Party to the Lisbon Agreement sends an application for protection, all the other contracting parties have one year to examine it. During that one-year period, each Contracting Party verifies, among other parameters, whether the name is generic within the territory over which it has sovereignty. If the contracting party that examines the application concludes that the name is generic, it will not accept the protection on its territory. However, if it considers that there is no possibility for the name to be generic on its territory, and that the other requirements of the Lisbon Agreement are met, it will then formally accept the protection. If the appellation is protected, it must be effectively protected, which is why the Delegations during the conference discussed on the need for effective protection by all contracting parties; in other words, protection against any usurpation, imitation, evocation or unfair practice aimed at taking advantage of the reputation of the appellation. If the contracting party effectively protects the appellation, then, in principle, there is no risk that it would become generic on its territory. However, there may be circumstances where it is found that a term is perceived as generic within the population either due to aggressive advertising through social networks, or because there is an absence of control bodies. In that case, this would be at variance with the commitments of the Contracting Party. Hence, in this regard, it is specified in the first part of Article 12 that registered appellations of origin or registered geographical indications cannot be considered as having become generic. Thus, the philosophy of the Chair Non-Paper was that, as long as there is a commitment from a Member State to protect a given appellation, that appellation cannot be considered generic because there is a legal presumption of non-genericity. If one day, for any reason whatsoever, it is found that the appellation has been canceled or invalidated, it would not automatically become generic simply because the protection has ceased to exist. A review of the appellations currently protected under the Lisbon Agreement would reveal that there are some which have very limited production or marketing, but this does not constitute a reason to consider them as generic.

491. Ms. KOPECKÁ (Czech Republic), aligning herself with the statements made by the Delegations of Bulgaria, Italy and Portugal, expressed her Delegation's reservation with regard to the text of Article 12.

492. Ms. MOORE (Australia) pointed out that, if the suggested language in Non-Paper No. 4 were to be amended to include the words "in the Contracting Party of Origin", that would render the provision incompatible with trademark systems.

493. The CHAIR noted that some Delegations had indicated that they needed more time to consider Non-Paper No. 4 and proposed to revert to it later.

Item (xiii): whether Article 19(1) should establish an exhaustive or a non-exhaustive list of grounds for invalidation (cont'd)

494. The CHAIR introduced Non-Paper No. 5, in which he was proposing a new draft for Article 19 on invalidation that did not provide for a list of grounds for invalidation.

495. Mr. POLINER (Israel) said that his Delegation considered the new text as a bridging language and as a way to move forward.

496. The CHAIR noted that there were no other comments and adjourned the meeting.

<p>Eighth Meeting Tuesday, May 19, 2015 Evening</p>

Articles 1 to 20 of the draft New Act (Non-Paper No. 12)
Draft Regulations under the New Act (Non-Paper No. 13)

497. The CHAIR invited Main Committee I to consider Non-Paper No. 12, containing a consolidated version of Articles 1 to 20 of the draft New Act, and Non-Paper No. 13, containing a consolidated version of the draft Regulations. He explained that the consolidated texts incorporated the latest versions of the Non-Papers by the Chair, reflected the outcome of the informal and formal consultations on Articles 11 and 12, and included some consequential changes to certain related provisions. He invited the participants to discuss the remaining pending issues, namely those concerning Articles 11, 12 and, if necessary, Articles 13 and 17.

498. Mr. HALL ALLEN (European Union) said that his Delegation could go along with the proposed texts concerning Articles 11, 12, 13 and 17.

499. Ms. OBANDO (Costa Rica) said that, with regard to Article 11, her Delegation wished to have a proper balance that is consistent with national legislation. Her Delegation had problems with Article 11(1)(a)(ii) and Article 11(2), concerning the reference to "imitation", as it is considered to be an indeterminate legal concept that is not reflected in national laws.

500. Ms. COTTON (United States of America) said that, in addition to other concerns with the Basic Proposal as it stood, her Delegation considered that the text in Non-Paper No. 12 did not reflect the views expressed by her Delegation on the four issues identified by the Chair, although they had been extensively explained during the discussion in informal sessions.

501. Mr. SCHMIDLIN (Italy) concurred with the Chair's assessment of the situation and lent his support to the proposals made on Articles 11, 12 and 13.

502. Ms. VIEIRA LOPES (Portugal) endorsed the Chair's assessment of the outcome of the discussion, considering that it faithfully reflected the situation at that stage. She further expressed her Delegation's appreciation for Non-Papers No. 12 and 13, which showed the effort made in finding flexible and balanced solutions, and aligned herself with the statement made by the Delegation of the European Union with regard to Articles 11, 12 and 13.

503. Ms. FOUKS (France), thanking the Chair for his attention and the effectiveness with which he led the discussions, recalled that although the discussions had taken place in an informal session, they had also been open to all observers, and much had been done to give consideration to the practices of each and everyone. She indicated that during these discussions her Delegation had had many concerns, including those pertaining to signature, intention to use and relations with the earlier marks, but that it had made efforts to arrive at this proposal. Consequently, she thought that it was not fair to say that observers had not been heard. Finally, she indicated that her Delegation agreed with the proposals on Articles 11, 12 and 13.

504. Ms. CHARIKHI (Algeria) indicated that she agreed with articles 11, 12 and 13 presented in the Non-Paper.

505. Ms. KOPECKÁ (Czech Republic), expressing her appreciation for the Chair's efforts in conducting the discussion, lent her Delegation's support for the proposals concerning Articles 11, 12, 13 and 17.

506. Mr. GONDA (Hungary) said that his Delegation could go along with the statements made by the Delegations which had expressed their support for the proposals on Articles 11, 12, 13 and 17, as contained in the document.

507. Mr. OKIO (Congo) congratulated the Chair for taking into account all proposals and lent the support of his Delegation to the text that was presented.

508. Mr. KLINKA (Slovakia), expressing his appreciation for the efforts made by the participants during the negotiation and thanking the Chair for the consolidated text, said that his Delegation supported the text as proposed.

509. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) said that, although it had some difficulties in relation to certain provisions, his Delegation endorsed the texts prepared by the Chair, in a spirit of flexibility.

510. Ms. PEROVIĆ (Montenegro), expressing her appreciation for the work of the Chair during the negotiations and on consolidating the texts, associated her Delegation with the statements made by those Delegations that had supported the proposals on Articles 11, 12, 13 and 17.

511. Mr. MOLDOVAN (Republic of Moldova) said that his Delegation welcomed Non-Paper No. 12 and endorsed the proposals on Articles 11, 12, 13 and 17.

512. Ms. MOORE (Australia) concurred with the Chair's assessment of the items that remained pending and those that had been resolved, and considered that certain issues remained to be discussed on Articles 11, 12, 13 and 17. Endorsing the view expressed by the Delegation of Costa Rica about the need to achieve the right balance, she stressed the importance of reaching an outcome consistent with national law and accommodating both trademark and sui generis systems, which, in her view, was not achieved by the text proposed for Articles 11, 12, 13 and 17. Finally, she expressed concern with regard to Articles 11(2) and 12 and indicated that, in her Delegation's view, the current draft of Article 12 seemed to backtrack on the progress.

513. Mr. SATO (Japan), while expressing his Delegation's concerns with regard to Non-Paper No. 12, agreed with the Chair's assessment that Articles 11, 12, 13 and 17 remained pending issues. He was of the view that Article 11(2) might cause legal uncertainty due to the use of ambiguous words, such as "imitation", and that it expanded the scope of protection to an extent which went beyond the level of protection generally adopted by WIPO Member States.

514. Mr. SCHAEELI (Switzerland) noted with satisfaction the outcome of the negotiations and congratulated the Chair on the way in which he had guided the work of Main Committee I. His Delegation believed that the cooperative and constructive spirit, along with a sense of flexibility, had allowed good progress in the discussion, and that a compromise result was reflected in Non-Paper No. 12. Expressing his appreciation for the spirit of openness and inclusiveness of the process, he acknowledged that Switzerland, in its capacity of observer, had actively participated in the intensive process of formal and informal negotiations. Noting that his Delegation's views had been taken into account and were reflected in the text, he lent his support to the proposals for Articles 11, 12, 13 and 17.

515. Mr. KIM (Republic of Korea), recognizing the work of the Chair in trying to reach a compromise between Member States and Observer Delegations, said that, following the expansion of the scope of the New Act to geographical indications, his national legislation had to be carefully considered. Furthermore, he expressed his concern with regard to Articles 11, 12 and 13, in respect of which he believed that work was still needed.

516. Mr. GERVAIS (ADALPI), indicating that ADALPI was a forum to promote the benefits of balanced intellectual property protection, said that his association recognized geographical indications as a form of intellectual property that both producers and consumers could benefit from. Producers got recognition from their adherence to tradition and consumers got the seal of a higher quality which they perceived to derive from the origin of a product. Expressing his concern about the split among countries which protected geographical indications through trademarks and those which protected geographical indications through sui generis systems, he pointed out that, if the Lisbon System were to become a worldwide system, both groups needed to find ways to regulate the interface between those two types of symbols. The TRIPS Agreement contained fairly clear rules on the subject and it seemed preferable to harmonize the New Act with those rules. The more the New Act departed from the TRIPS provisions, for example in proposed Articles 11 and 12 as reflected in Non-Paper No. 12, the more difficult it would be for countries that did not have a sui generis regime to join. In addition, the proposed New Act did not solve the issue of the registration and notification system to be set up under the TRIPS Agreement. He stressed that this might be the last opportunity for decades to make the Lisbon System work across different legal systems. On the issue of genericness, there was tension because the first

producer to use a name or other identifier of a region or locality might want to claim worldwide rights, but migrations and other factors could make that difficult. By contrast, the common law tradition recognized the first good-faith user in a given territory as having priority. That tension served as a backdrop for the discussion of many provisions that remained open. Recalling that, at the time of registration, a Lisbon member could refuse a geographical indication if considered generic in its territory, he said that the New Act should not prevent courts in a territory from taking account of the behavior of the beneficiaries or their representatives. He wondered what would happen if the registrant did nothing for years after registration while a third party used the geographical indication with the beneficiary's knowledge. He further wondered whether a beneficiary who informally condoned the use by a third party could then claim geographical indication rights against that user. Recalling that there was no obligation for Lisbon members to enforce geographical indications *ex officio*, he said that the relevance of the behavior of the right holder was a well-accepted principle in all intellectual property laws, under both the Paris Convention and the TRIPS Agreement. In conclusion, he expressed his readiness to provide text, if needed, and urged the Delegations to consider those issues, if the Lisbon System were to work across different legal systems.

517. Mr. CURCHOD (CEIPI) felt that solutions acceptable to all participants had not yet been reached on the provisions relating to the content of protection. He ardently wished that the final necessary compromises would be reached in the remaining hours. Furthermore, he requested clarification from the Secretariat on the status of footnotes. He observed that the footnotes found in the TRIPS Agreement are an integral part of the agreement, whereas the practice in treaties concluded under the aegis of WIPO is to rely on agreed statements and not on footnotes. Lastly, he called on the Secretariat to correct the expression “natural or legal persons” in the English version of Article 1 (xvii) by replacing those words with “natural persons or legal entities”, as was done in the rest of the Chair Non-Papers, No. 12 and No. 13.

518. Mr. VITTORI (oriGIn) welcomed with satisfaction the consolidated draft text, expressing his support in particular to Article 11, which was the pillar of the new system. He believed that said provision was a successful outcome of the reform of the Lisbon Agreement, since it could serve the interests of geographical indication groups that needed to obtain international protection of their geographical indications and enforce their rights at controlled cost. Recalling the importance of flexibilities in the system with a view to attracting a larger membership, he welcomed such flexibilities as the possibility of introducing individual fees, the possibility of requiring the signature of the beneficiary or of the owner of the geographical indication in the application, the possibility for the beneficiaries to directly file an international application if the national law so allowed, and the declaration of intention to use. He also believed that the revised formulation of Article 13 was compatible with WTO jurisprudence. In conclusion, he expressed the view that the text contained in Non-Paper No. 12 was flexible and would allow countries with different legal regimes to join the Lisbon System.

519. Mr. MACHADO (INTA), expressing his appreciation for the work of the Committee and his gratitude to the Delegations for showing flexibility, noted that, if not entirely alleviated, a number of the concerns expressed by INTA at the beginning of the Conference had been addressed. He recalled that INTA had actively participated in the revision process of the Lisbon Agreement guided, in particular, by the aim to build an international registration system accessible to all members of WIPO. Pointing out that the Conference had made considerable progress to reach that objective, he noted, however, that certain issues remained

to be addressed and shared the same concerns as some Observer Delegations, in particular with regard to Articles 11, 12 and 13.

520. Ms. COTTON (United States of America) said that she had listened carefully to the views expressed by the Observers and agreed that Non-Paper No. 12 reflected considerable compromise and that a number of provisions reflected consensus. She expressed her Delegation's gratitude to all Delegations, which had worked very closely in order to find a consensus on many articles. However, the Chair had noted four pending articles where consensus had not been achieved and compromise had not fully occurred. Pointing out that her Delegation had offered texts and explanations on critical and fundamental points, but did not see those reflected in the text of the provisions, she declared that her Delegation was looking for consensus.

521. The CHAIR, noting the comments of a drafting nature made on the text of the consolidated versions of the Non-Papers, proposed a number of editorial changes to Non-Papers N° 12 and 13. Moreover, referring to the last sentence of Rule 16(4), reading "Rules 9 to 12 shall apply mutatis mutandis", he expressed the view that the mutatis mutandis application should lead to another date of protection for the international registration in the Contracting Party concerned.

522. The CHAIR suspended the meeting.

[Suspension]

523. The CHAIR, resuming the meeting, noted that the discussion of Non-Papers No. 12 and No. 13 had resulted in a clear support for the texts and his assessment of the state of play in the negotiations. He then invited Main Committee I to discuss Articles 11 and 12, as proposed in Non-Paper No. 12.

524. Mr. POLINER (Israel) concurred with the Chair's statement and said that, for the sake of inclusiveness and of a successful outcome that would enable to build a truly global system, members would need to find ways to accommodate other countries, whether by the addition of reservations, or by endorsing some of the suggestions made by ADALPI.

525. Ms. MOORE (Australia), recalling that concerns with regard to Articles 11 and 12 had been previously expressed by her Delegation, wished to elaborate further on what those concerns were and to propose how to address them. Article 11, in particular its paragraph (2), caused difficulties, as it did not rely on the suggestion of a connection. The best way to address that problem would be to delete paragraph (2). With regard to Article 12, she proposed to return to the language previously used in the Chair's Non-Paper No. 4, which allowed for a permissive system and accommodated both trademark and sui generis systems.

526. Ms. COTTON (United States of America) expressed her confusion, as she was under the impression that a consensus had been found on Article 11 that accommodated many of the issues identified in paragraph (2) of Article 11 within the text of paragraph (1). She agreed with the statement made by the Delegation of Australia that paragraph (2) went beyond the TRIPS Agreement and beyond what trademark systems could do with regard to geographical indications. She also supported the other comments made by the Delegation of Australia with regard to Articles 11 and 12. She wondered whether the language that had been deleted at the end of Article 12 was not precise enough. She said that, following her explanations of the

concept of acquiescence in an informal session on Article 12, concerns had been raised with reference to the maintenance procedures and ex officio cancellation after a period of time on the grounds of genericness. She wished to reiterate that the doctrine of acquiescence did not refer to that. She expressed her sentiment that the text as it appeared in the Non-Paper precluded countries protecting geographical indications through their trademark system from joining and that all the work done over the last two weeks to accommodate trademark systems and sui generis systems would be in vain, if Article 12 would be retained as it stood in the Non-Paper. As she regretted that situation, she proposed a second paragraph for that Article, as a possible solution to the problem, which would read as follows: “Article 12 is without prejudice to the ability of national authorities of Contracting Parties to decide the effects of an international registration to be unenforceable due to acquiescence or abandonment.”

527. Mr. KIM (Republic of Korea), recalling that the Republic of Korea protected geographical indications through the trademark system, shared the same concerns with regard to Articles 11 and 12 as those expressed by the Delegations of Australia and the United States of America. In respect of Article 11(2), he said that it should be possible for Contracting Parties to make reservations on its application. In respect of Article 12, he preferred the text proposed in Non-Paper No. 4 Rev. or the proposal made by the Delegation of the United States of America.

528. Mr. WU (China), expressing his reservation with regard to Articles 11 and 12, said that further discussion would be appropriate to explore alternatives to the present wording, taking into account all the concerns indicated by other Delegations.

529. Ms. OBANDO (Costa Rica) noted that she had expressed reservations with respect to Article 11(1)(a)(ii) which she considered to be inconsistent with the laws of Costa Rica. She explained that Costa Rica had made significant efforts in the past decade to adapt its national laws to the best international standards on the protection of geographical indications and trademarks, and that it had managed to strike an appropriate balance between the two frameworks. It was difficult for her Delegation to go beyond this framework that required a major effort at the national level and much work in convincing civil society stakeholders and productive sectors. Her Delegation considered Article 11(1)(a)(ii) to be inconsistent with the legal framework and therefore could not support the article as drafted.

530. The CHAIR asked whether the Delegate of Costa Rica had a proposal to address that problem.

531. Ms. OBANDO (Costa Rica) said that her Delegation was trying to explore the language of maximum protection employed at the national level to see whether they could strike a balance. She added that her Delegation had not worked on a proposal on this subject because item (i) of paragraph 4, included in revised Non-Paper No. 7, provided a balance which made it possible to support Article 11(1)(a)(ii). However, on discovering that item (i) of paragraph (4) does not feature in Non-Paper No 12, her Delegation found it difficult to determine how they could be constructive on this subject matter.

532. The CHAIR confirmed that the New Act would set a uniform standard for protecting appellations of origin and geographical indications, without giving Contracting Parties the ability to opt out on the basis of declarations or reservations.

533. Mr. POLINER (Israel) said that, if the aim of the revision process was to expand the membership of the Lisbon Union, consideration should be given to introducing the ability to make declarations or reservations, which would accommodate many countries, such as Australia, Costa Rica, the Republic of Korea and the United States of America. He further expressed his support for introducing an agreed statement or a second paragraph in Article 12, in the spirit of the proposal put forward by the Delegation of the United States of America.

534. Mr. SCHMIDLIN (Italy) supported the text of Article 11(2) as it stood. With regard to Article 12, he wondered whether, in the United States of America, circumstances arising independently of the will of the beneficiaries, such as import or export restrictions, were recognized as valid arguments in defense of abandonment or acquiescence.

535. Mr. VANERIO (Uruguay) said that they were facing a unique opportunity to have a treaty that included all the views and different approaches to protecting appellations of origin and geographical indications and it was worth the trouble to consider all proposals and efforts if they wished to end the Conference with a treaty that included the 188 Member States of WIPO.

536. Ms. MOORE (Australia) expressed her support for the proposal put forward by the Delegation of the United States of America.

537. Ms. COTTON (United States of America), noting that the doctrine of abandonment could be found in many national trademark systems around the world, wished to explain the test applied in the United States of America. There were two ways that trademark owners could lose their rights. The first way was non-use. For abandonment purposes, non-use was not enough. For loss of rights due to non-use, there would be a prima facie case after three years of non-use. In addition, there also had to be intent not to resume use. She wished to point out, however, that that was not the situation covered by Article 12. The situation covered by Article 12 was abandonment of a different kind. Article 12 concerned cases where the trademark lost its ability to distinguish goods and services, not through non-use, but due to acts of omission or commission by the owner that led to the loss of the significance of the identifier. "Acts of omission or commission" referred to failure to prevent confusing uses, so that over time those unauthorized uses led to the end result, in the eyes of the consumer, that the trademark or the geographical indication no longer identified the source. When the trademark or geographical indication no longer identified the source due to lack of enforcement action, it had become a generic identifier, and the rights of the owner had been abandoned.

538. The CHAIR wondered whether that kind of omission to enforce the rights could be justified in view of circumstances arising independently of the will of the trademark owner that had prevented him from taking legal action against unauthorized uses.

539. Ms. COTTON (United States of America) said that a case of an excusable non-use would depend on the reason of non-use and on whether that would suffice. It would be a question of fact to be determined under the United States of America case law, but non-use alone would not be enough. When faced in court with a counterclaim based on non-use, the owner would have to demonstrate intent to resume use. Thus, non-use for three years was a prima facie case of abandonment, which could be rebutted by the owner demonstrating intent to resume use.

540. Ms. FOUKS (France), expressed her concern about the difficulties which the Commission faces, especially on the issue of generics, recalled that there was always the possibility of refusing the registration of a geographical indication. She regretted that the debate had been shifted to the lack of protection and worried that the definition of generic would fall into oblivion. She also said that she failed to perceive the meaning of the expression “after a period of time” used by the Delegation of the United States of America. Furthermore, the delegate recalled the definition of the generic as provided in a footnote on page 2 of the agreement. She wished to make two comments on the definition. The first related to the principle of territoriality, which is dear to some Delegations, namely the Delegation of France, since genericity is appreciated from the standpoint of territoriality. The second comment related to the fact that they were discussing about a common noun in everyday language. It raised the question of whether it was reasonably possible to assert that the lack of protection for three years, or even 10 years, was enough for an appellation to become a common noun in everyday language. She acknowledged her perplexity at the developing discrepancy between a problem of brand protection and acquiescence, on the one hand, and genericity on the other hand.

541. Mr. GERVAIS (ADALPI), referring to the question of non-use due to external circumstances, recalled that Article 19.1, second sentence of the TRIPS Agreement clearly provided that circumstances arising independently of the will of the owner of the trademark which constituted an obstacle to the use of the trademark, such as import restrictions or other government requirements for goods or services protected by the trademark, should be recognized as a valid reason for non-use. In respect of Article 12, he proposed the following language for a possible second paragraph or an agreed statement: “Nothing in this Act prevents a court or Competent Authority in a Contracting Party from refusing to enforce rights in a registered appellation of origin or geographical indication if, after due process, such court or Competent Authority finds that behavior by the beneficiaries or their representative has led to the loss by the appellation of origin or geographical indication of its ability to designate a good as originating in the geographical area identified by the appellation or indication.”

542. Mr. VITTORI (oriGIn), reiterating his strong support for Article 11 as it stood, noted, with respect to Article 11(2), that more and more jurisdictions offered that kind of protection in respect of geographical indications and appellations of origin, whether through a bilateral agreement or not. This led him to believe that that was the trend towards the protection of geographical indications in the world. He noted that protection in respect of goods that were not of the same kind as those to which appellations of origin and geographical indications applied was important from a practical point of view, especially for some commodities, such as coffee, where famous geographical indications for coffee had been used for services.

543. The CHAIR suspended the meeting.

[Suspension]

544. The CHAIR, resuming the meeting, announced that informal discussions had taken place on Article 11 and Article 12, where various options had been considered. While some Delegations had expressed support for including a provision in Article 12, other Delegations had indicated their preference for an agreed statement. A few Delegations had wondered whether the issue should be addressed in the context of Article 14, as it might be regarded as an enforcement issue.

545. Mr. GONDA (Hungary), noting that the informal consultation had been very useful in order to have a better understanding of the concerns expressed by certain Delegations, said that most of those concerns related to enforcement procedures and could be covered by Article 14. In order to preserve the result of the informal consultation, he expressed his Delegation's preference for an agreed statement in the context of that Article, along the lines of the text suggested by ADALPI.

546. The CHAIR, referring to Article 7(5) said that, in the course of the discussions, he had already concluded that subparagraph (a) would be kept as proposed in the Basic Proposal. However, subsequently, concerns had been expressed as to the exact language of the provision and a proposal had been made by the Delegation of France in Main Committee II for a slightly reworded version of the last sentence of the subparagraph. The Chair invited the Delegation of France to introduce its proposal to Main Committee I.

547. Ms. FOUKS (France) indicated that it was perhaps necessary to consider a statement on Article 14. She also wished to speak again on Article 7(5) because she did not recall that the issue of individual fees was formally resolved during the informal discussions. Her understanding from the discussions was that some Delegations had difficulties with the idea of applying fees for the protection of appellations of origin or geographical indications after registration, but not about renewal or maintenance of protection. Hence, the proposal of France was that, in Article 7(5)(a), reference should be made not to renewal or maintenance fees, but to the fact that there may be administrative costs related to protection of the appellation of origin or the geographical indication in that Contracting Party.

548. The CHAIR, noting that the Delegation of France was willing to consider an agreed statement to Article 14, proposed to add such a footnote in the consolidated version of Article 14. Furthermore, the Chair wondered whether the Committee could agree with the proposal to reword the last sentence of Article 7(5)(a).

549. Mr. POLINER (Israel) sought clarification from the Delegation of France about its proposal, as two different versions of it had been presented in the course of the discussion, while indicating that Article 7(5)(a) as it stood seemed to reflect what was needed.

550. Mr. THÉVENOD-MOTTET (Switzerland) supported the question posed by the Delegation of France as to when a position request was made on Article 7.5), considering that his Delegation had repeatedly taken a stand against the last part of the previous version of Article 12, and that it is this same provision that appears in the last sentence of Article 7(5)(a). He declared that he was still in favor of deleting the principle of renewal or maintenance included in that last sentence of Article 7(5)(a), as it was contrary to the principle of unlimited duration of protection and the level of protection applicable to all contracting parties. Having heard that alternative proposals from the Delegation of the France could address the needs of some Delegations, he said that his Delegation wished to examine them before taking a stand on this issue.

551. Ms. KIRIY (Russian Federation), expressing her support for the proposal put forward by the Delegation of France, said that it met the expectations of her Delegation. She also proposed to determine in paragraph (b) the consequences of the non-payment of the administrative fees, to the effect that if those were not paid, the rights of the beneficiaries should be terminated.

552. Ms. FERRITER (United States of America) expressed her Delegation's support for the statement made by the Delegation of Israel and wondered whether it was possible to see in writing the two versions of the proposal made by the Delegation of France. In her Delegation's view, the first version seemed to address the Russian Federation's question about authorized user fees and the ability to collect them. She expressed her Delegation's disappointment that the proposal seemed once again to be picking between systems instead of proposing an amendment that could bridge both systems and encompass both sets of needs. She believed that the proposal deleted what trademark systems needed and replaced it with another system. Her Delegation wished the proposal to be more encompassing, so as to appeal to a broader range of WIPO members and to allow both systems to be integrated in the New Act and not exclude one.

553. Ms. KOPECKÁ (Czech Republic) seconded the proposal made by the Delegation of France.

554. Mr. GONDA (Hungary) said that his Delegation was flexible concerning the proposal put forward by the Delegation of France, and believed that the wording proposed could accommodate different needs, including the concerns of non-Lisbon Union members.

555. Mr. SCHMIDLIN (Italy) concurred with the view that the proposal by the Delegation of France relating to Article 7(5) seemed to accommodate different needs, and looked forward to having a text and hearing the debates. He further expressed his Delegation's readiness to consider an agreed statement on Article 14.

556. Mr. KIM (Republic of Korea), endorsing the statements made by the Delegations of Israel and the United States of America, expressed his Delegation's preference for Article 7(5)(a) as it stood.

557. The CHAIR proposed to keep the text of Article 7(5) as contained in the Basic Proposal under Alternative A. He invited the Delegation of France to submit its proposal to the Secretariat, so that it could prepare, for the next meeting of Main Committee I, a text presenting two alternatives for Article 7(5)(a), last sentence.

558. Ms. VIEIRA LOPES (Portugal) expressed her Delegation's support for the proposal made by the Chair on Article 7(5) and her willingness to explore the solution mentioned for Article 14.

559. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) welcomed the proposal put forward by the Delegation of France on Article 7(5)(a).

560. Mr. CURCHOD (CEIPI) indicated that he wished to support the agreed statement proposed by ADALPI.

561. The CHAIR adjourned the meeting.

Ninth Meeting
Wednesday, May 20, 2015
Morning

562. The CHAIR said that the present session of Main Committee I had been convened to consider whether Articles 1 to 20 of the draft New Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and the draft Regulations under the draft New Act, as contained in documents LI/DC/14 and LI/DC/15, respectively, could be recommended for adoption by the Plenary. He recalled that there were still issues pending, namely, in relation to Article 7(4), i.e., the renumbered Article 7(5) of the Basic Proposal, and in relation to Article 14. As regards Article 7(4), his understanding was, on the basis of the informal discussions with Delegations that he had conducted prior to the present session, that there was clear support for Alternative B. He, therefore, invited the Committee to recommend Alternative B of Article 7(4) to the Plenary for adoption. With respect to Article 14, he recalled that a draft agreed Statement had been included in the latest version of the draft New Act, as a result of the discussions the previous day. However, following the informal discussions he had conducted with Delegations, he had come to the conclusion that there was not sufficient support for including the draft agreed Statement in the draft New Act. Instead, it had become apparent from the informal consultations that most Delegations were of the view that the New Act should not address the issue and that it should be left open for Contracting Parties to deal with the matter addressed in the draft agreed Statement in accordance with their own legal system and practice. As regards the two footnotes contained in the text, he suggested that they be treated and reproduced as "Agreed Statements" in the draft New Act, as he understood that the standard practice in WIPO was to have "Agreed Statements" instead of footnotes. Lastly, with respect to the title of the draft New Act, he suggested calling the New Act "The Geneva Act of the Lisbon Agreement". The Chair concluded by asking whether Main Committee I was in a position, on this basis, to recommend that Articles 1 to 20 of the draft New Act, as contained in Document LI/DC/14, and the draft Regulations, as contained in Document LI/DC/15, be submitted to the Plenary for adoption.

563. Ms. OBANDO (Costa Rica) said that her Delegation still had some reservations about the second sentence of Article 11(1)(a)(ii), but that it was still holding consultations and trying to find solutions in order to be constructive. For that reason, her Delegation wished to have a clear meaning of the phrase "or where applicable" since, in some cases, when reference is made to the national laws in the document, it is expressly stated that a given procedure or given obligations would be contracted or applied in accordance with the laws of each party. Her Delegation understood that this was the meaning intended for the phrase "where applicable". However, since Article 11(1)(ii) does not explicitly refer to national laws, the Delegation remained in doubt as to whether that phrase also included situations of law that must be understood and applied in accordance with national laws.

564. The CHAIR confirmed that the term "where applicable" in Article 11(1)(a)(ii) referred to both the legal and the factual situation prevailing in a given Contracting Party.

565. Ms. OBANDO (Costa Rica) said that, given the clarification made by the Chair, her Delegation would have no objection to Article 11.

566. Ms. COTTON (United States of America) stated that her Delegation did not support the proposal to recommend the adoption by the Plenary of documents LI/DC/14 and LI/DC/15, because consensus had not been reached on these texts among WIPO members. Her Delegation had serious reservations about the texts and had provided extensive comments, explanations, alternative texts and drafting suggestions, in the course of the meetings of the Working Group, as well as in its February 1, 2015 submission and during the Diplomatic Conference, in order to try to achieve consensus. In her Delegation's view, however, consensus was still elusive with regard to some key provisions, namely Articles 7, 11, 12, 13, 14 and 17. With regard to Article 7, she recalled that her Delegation supported Alternative A, which provided an opportunity for Contracting Parties with trademark systems to require individual fees also for maintenance or renewal. Her Delegation did not agree with the current text contained in Alternative B. Without the ability to collect individual fees for maintenance, countries with trademark systems to protect geographical indications could not accede to this New Act. With regard to Article 11, she recalled that her Delegation had indicated that the required protection was too broad, particularly in paragraph (2), and could not be applied in trademark systems. Therefore, this made it impossible for countries with trademark systems to protect geographical indications to accede to this New Act. With regard to Article 12, her Delegation had offered, at least, four proposals that had not been accepted during the informal sessions. Article 12 excluded the accession of countries with common law trademark systems such as the United States of America. Article 13 continued to raise questions with regard to international trademark obligations for her Delegation. As regards Article 14, her Delegation and others had agreed on the text of a footnote on this provision, which would leave the issue related to Article 12 to national laws. However, the footnote had been deleted. Lastly, with regard to Article 17, she expressed the concerns of her Delegation with regard to the transition period, whose scope was too broad. She noted that the amendment offered by her Delegation during the informal sessions had not been discussed nor reflected in the text. She reiterated that her Delegation had serious reservations about this text and noted that there was no clear consensus on it.

567. Ms. MOORE (Australia) concurred with the statements made by the Delegation of the United States of America and expressed her Delegation's disappointment about the outcome of the discussions on the text of the proposed agreement. She indicated that her Delegation had specific concerns about Articles 11 and 12. She pointed out that, irrespective of the claim on countries being free to choose the type of legislation for protection, some of the articles of the proposed New Act determined the inability of countries relying on a trademark system to use this Act.

568. Mr. OTABE (Japan), reiterating the assessment made by previous speakers on the fact that not all WIPO members had reached a consensus on some key elements included in the current text, stated that his Delegation had a specific concern about Article 11(2).

569. Mr. KIM (Republic of Korea) expressed the reservation of his Delegation about the text to be recommended to the Plenary, for the reasons set out in the statements made by the Delegations of Australia, Japan and the United States of America. He declared that his country, as a member of the WIPO Convention protecting geographical indications under the trademark system, had concerns about Articles 7, 11(2) and 12.

570. The CHAIR, noting that four Observer Delegations had expressed their reservations about recommending the draft New Act and the draft Regulations to the Plenary for adoption,

while all Member Delegations were in favor of such a recommendation, requested confirmation from Member Delegations that they were in favor of recommending Articles 1 to 20 of the draft New Act, as well as the draft Regulations, to the Plenary for adoption.

571. Mr. SCHMIDLIN (Italy) said that his Delegation was in favor of recommending the referred text to the Plenary.

572. Mr. RAMALHEIRA (Portugal) indicated the support of his Delegation for the submission of the text to the Plenary.

573. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) said that his Delegation was in favor of recommending the text to the Plenary.

574. Ms. KOPECKÁ (Czech Republic) expressed the support of her Delegation for the submission of the text to the Plenary.

575. Ms. FOUKS (France) said that her Delegation was in favor of transmitting the texts to the diplomatic conference meeting in plenary.

576. Ms. CHARIKHI (Algeria) said that her Delegation agreed to the submission of the abovementioned texts to the diplomatic conference meeting in plenary.

577. Ms. YOUSFI (Tunisia) said that her Delegation was in favor of recommending the texts in question to the Diplomatic Conference meeting in plenary for adoption.

578. Mr. MOLDOVAN (Republic of Moldova) stated that his Delegation was in favor of submitting the texts to the Plenary for adoption.

579. Ms. ROGAČ (Montenegro) indicated that her Delegation was in favor of recommending the texts for adoption by the Plenary.

580. Ms. VIGNJEVIĆ (Bosnia and Herzegovina) said that her Delegation agreed to submit the proposed documents to the Plenary.

581. Ms. DÍAZ MORENO (Nicaragua) said that her Delegation agreed that the text be presented to the Plenary.

582. Mr. OHOUKOH (Togo) said that his delegation was equally favorable to the transmission of texts to the Diplomatic Conference meeting in plenary.

583. Ms. RODRIGUEZ CAMEJO (Cuba) said that her Delegation agreed that the text be recommended to the Plenary.

584. Mr. EMRULI (The Former Yugoslav Republic of Macedonia) said that his Delegation expressed its favor for submitting the text to the Plenary.

585. Ms. KOUMBY MISSAMBO (Gabon) joined other Delegations to recommend these texts to the Diplomatic Conference, meeting in plenary.

586. Mr. MAYAUTE VARGAS (Peru) said that his Delegation also agreed with the recommendation of adopt both texts during the Plenary.
587. Mr. GONDA (Hungary) said that his Delegation also supported the submission of both texts to the Plenary for adoption.
588. Mr. SO (Democratic People's Republic of Korea) declared that his Delegation joined the other Members of the Lisbon Union in their support for submitting the texts to the Plenary.
589. Ms. ARGIROVA (Bulgaria) declared that her Delegation supported the submission of the texts to the Plenary.
590. Ms. ILBOUDO (Burkina Faso) said that her Delegation was also in favor of transmitting the texts to the Diplomatic Conference meeting in plenary.
591. Mr. POLINER (Israel) said that his Delegation went along with the other Delegations that supported the transfer of these texts to the Plenary. However, his Delegation had hoped that there would be more explicitly inclusive language in the New Act and was disappointed that it could not be so. His Delegation accepted the explanations given by the Chair about the possibility for Contracting Parties to interpret certain elements, that could have been changed at the last minute, in a manner consistent with some of the ideas which had been put forward on paper.
592. Ms. HERNÁNDEZ NARVÁEZ (Mexico) said that her Delegation joined the others in accepting that the documents be submitted to the Plenary.
593. Mr. MELÉNDEZ GARCÍA (Costa Rica) said that his Delegation supported the recommendation that both texts be submitted to the Plenary.
594. Mr. KLINKA (Slovakia) declared that his Delegation also agreed with submitting the texts to the Plenary for adoption.
595. Mr. OKIO (Congo) said that his Delegation was also in favor of transmitting the texts to the Diplomatic Conference, meeting in plenary.
596. Mr. JOSAPHAT (Haïti) said that his Delegation was in favor of transmitting the two texts to the Diplomatic Conference, meeting in plenary.
597. Mr. GOGILIDZE (Georgia) declared that his Delegation supported the submission of the texts to the Plenary.
598. Mr. HOLLY (Australia), recalling that his Delegation had expressed the view that it could not support the transmission of these texts to the Plenary, sought clarification as to whether the decision should be adopted by the Conference or by the Members of the Lisbon Union.
599. The CHAIR said that the decision at issue was the decision by Main Committee I to recommend the documents in question to the Plenary for adoption. It was his duty to announce that all the Member Delegations having taken the floor were in favor of recommending the said texts to the Plenary for adoption.

600. The CHAIR declared that the decision to recommend the texts to the Plenary for adoption had been taken. He then invited Delegations wishing to make statements to do so.

601. Mr. VANERIO (Uruguay) said that the Delegation of Uruguay was not in a position to support the proposed decision.

602. Ms. PERLMUTTER (United States of America) said that her Delegation sought additional procedural clarification. Regarding the reference made by the Chair to a consensus of the Member Delegations having taken the floor, her Delegation understood that this referred to the Lisbon Union members and not to the entire Conference, i.e., not all WIPO members who were participating. As a result, in her Delegation's view, the recommendation that had been gavelled was a recommendation to the Plenary only by Lisbon Union members, not by the rest of the Delegations who were participating in the Conference.

603. The CHAIR invited the Secretariat to clarify the procedural nature of this issue.

604. Mr. KWAKWA (WIPO) said that it was his understanding that decisions were taken under Rule 34, which concerned decisions being taken as far as possible by consensus. He understood that the Chair had tried to take a decision by consensus. However, there was no consensus so that the Chair had to ascertain the exact views of the members of the Lisbon Union, as required under Article 34. The members of the Lisbon Union had recommended that the texts be sent to the Plenary for adoption. He concluded by confirming that the decision had been taken by the members of the Lisbon Union.

605. Mr. MACHADO (INTA) drew the attention of the Committee to a discrepancy regarding the translation of the terms "shall not prejudice" in the French version of Article 13(1), (2), (3) and (4). The terms "sont sans préjudice" in the French version convey the opposite of what is meant in the English text. In his view, "ne peuvent pas porter atteinte" would be the correct translation.

606. The CHAIR said that the French version would be aligned with the English one in case of inconsistency between the two.

607. The CHAIR thanked all the participants, Member Delegations, Observer Delegations and Observers for their huge efforts, the constructive spirit in which the negotiations had been conducted and the flexibility shown in respect of a number of issues. He also thanked the Secretariat, the Director General and his team, for their continuous support and assistance and for the high quality of their work. Finally, he thanked the interpreters for their valuable work, without which Main Committee I would not have been able to achieve that result.

608. The CHAIR closed the meeting.

MAIN COMMITTEE II OF THE DIPLOMATIC CONFERENCE FOR THE
ADOPTION OF A NEW ACT OF THE LISBON AGREEMENT FOR THE PROTECTION
OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION

Chair: Mr. Vladimir Yossifov (Bulgaria)

Secretary: Mr. Edward Kwakwa, Legal Counsel (WIPO)

First Meeting
Friday, May 15, 2015
Morning

1. The CHAIR welcomed the Delegations and thanked them for having entrusted him with chairing Main Committee II. He informed the Committee that the discussions would take place on an item by item basis, leaving non-concluded issues for a later stage. He urged the Committee to work in a speedy and constructive manner in order to avoid delaying the work of the Diplomatic Conference. Recalling that the President of the Conference had announced that the progress of Main Committees I and II would be reported on Monday, May 18, 2015, he said that the deadline to finish the work on the Basic Proposals was Tuesday, May 19, 2015. Therefore, he counted on the cooperation of the Committee to advance on the different issues. Finally, he invited the Secretariat to present the Secretariat Note of May 14, 2015.

Secretariat Note (May 14, 2015)

Informal Revision to Administrative and Final Provisions

2. Mr. KWAKWA (WIPO) informed the Committee that the Secretariat Note of May 14, 2015, proposed amendments to the administrative and final provisions of the Basic Proposal, based on the constitutional reform decisions taken by the Lisbon Union Assembly, as well as by all the other Unions in 2003. They concerned the periodicity of the meetings of the assemblies, the abolition of the Conference and the unitary contribution system that had been in practice since 1993/1994. Although those constitutional reform amendments had not been formally accepted by three-fourths of WIPO Member States, they reflected the practice that had been in place for over a decade. The specific language of the constitutional reform provisions had been reflected, particularly, in Article 24, where terms inconsistent with the constitutional reform provisions had been stricken out and modified.

3. The CHAIR recalled that Main Committee I had transferred the discussion of an item relating to the implementation aspects of Article 1(xiv) to Main Committee II. He then invited the Committee to make general statements, if any, and suggested working on the basis of the Secretariat Note.

Article 21: Membership of the Lisbon Union

4. The CHAIR drew the attention of the Committee to Article 21 and invited the Delegations to express their views on the provision. He noted that there were no comments or objections to Article 21 and concluded that the text was agreed by the Committee.

Article 22: Assembly of the Special Union

5. The CHAIR invited the Secretariat to present the provisions of Article 22.

6. Mr. KWAKWA (WIPO) drew the attention of the Committee to Article 22(6), underlining that the terms “once in every second calendar year of every ordinary session” had been struck out, so that Article 22(6)(a) provided that the Assembly would meet upon convocation by the Director General. That language was identical to the one contained in the Singapore Treaty on the Law of Trademarks and was meant to reflect the constitutional reform decision according to which all assemblies would meet, whether in ordinary session or in extraordinary session, at the same time each year.

7. The CHAIR noted that there were no comments or objections to Article 22(1) and concluded that its text was agreed by the Committee.

8. Mr. GAOUAOUI (Algeria) raised a question concerning the wording of the second sentence of Article 22.2(a)(ii). The Delegation of Algeria considered the French formulation of this provision to be terse and suggested inserting the terms “with due regard to the needs of the member of the Union”.

9. The PRESIDENT invited the Delegation of Algeria to submit its proposal in writing to the Secretariat, so that it could be presented to the Drafting Committee.

10. Ms. FERRITER (United States of America) recalled that there was a legal distinction in the current Lisbon Agreement between amendments and a revision resulting in a new agreement. While amendments could be binding upon current Contracting Parties, a revision could not. She underlined that, under the current Lisbon Agreement, any amendment to the articles should enter into force one month after written notifications of acceptance had been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said articles thus accepted should bind all the countries which were members of the Assembly at the time the amendment entered into force, provided that any amendment increasing the financial obligations of countries of the Special Union should bind only those countries which had notified their acceptance of such amendment. She noted that the New Act did not provide for the same safeguard clause in Article 27(3)(a) of the Basic Proposal. In her view, that could potentially increase the financial obligations of a Contracting Party without its consent. She wondered whether the Assembly would have the right to adopt amendments to Articles 22 to 24, which included provisions on the administration of the treaty.

11. Mr. KWAKWA (WIPO) recalled that the language contained in the Basic Proposal was similar to that contained in the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs. He pointed out that the Assembly was given

the right to amend provisions in respect of the Assembly itself, in respect of provisions on finances and in respect of amendments by the Assembly. He observed that the Diplomatic Conference should determine whether to change the language so as to reflect the comments made by the Delegation of the United States of America.

12. Mr. POLINER (Israel) said that his Delegation aligned itself with the statement made by the Delegation of the United States of America.

13. Mr. OKIO (Congo) expressed its satisfaction regarding the explanation provided by the Secretariat and expressed accordingly his preference that the provision not be modified.

14. Ms. FERRITER (United States of America) clarified that her question concerned the tasks under item (ix) [*adopt amendments to Articles 22 to 24 and 27*] and not item (iii) [*Regulations*] of Article 22(2)(a). The suggestion aimed at putting in square brackets the reference to Article 24 in Article 22(2)(a), until a discussion on Article 24 would take place. She expressed the view that the Lisbon membership might wish to consider whether Article 24 could be amended without a full consensus or only in a diplomatic conference.

15. The CHAIR concluded that the Committee had agreed on the text of Article 22(2)(a), items (i) to (x), except item (ix) as regards the reference to Article 24. He further noted that there were no comments on to Article 22(2)(b) and opened the discussion on Article 22(3) [*Quorum*].

16. Mr. GAOUAOUI (Algeria) requested clarifications on Article 22(3)(a) regarding the quorum and on Article 22(3)(b) regarding the vote. The Delegation wondered whether the same provisions as those in the Lisbon Agreement had been included in this article.

17. Mr. KWAKWA (WIPO) confirmed that one half of the members of the Assembly would constitute a quorum. The calculation would depend on the number of members eligible to vote on a given matter and at a given point in time. The number would change if the corresponding membership changed.

18. Mr. GAOUAOUI (Algeria) expressed his gratitude to the Secretariat. While highlighting its flexibility, he noted that his delegation would prefer nonetheless that in Article 22(3)(b), the terms “is less than one-half but equal to or more than one-third of the members of the Assembly [...]” be replaced by “is less than two thirds but more than one-half of the members of the Assembly [...]”.

19. The CHAIR invited the Delegation of Algeria to submit its proposal in writing and suggested to postpone the discussion on the issue. He then turned to Article 22(4). Noting that there were no comments or objections on Article 22(4)(a) and Article 22(4)(b)(i), he concluded that those texts were agreed by the Committee and turned to Article 22(4)(b)(ii).

20. Mr. GAOUAOUI (Algeria) requested clarifications on Article 22(4)(b)(ii) given that, in the opinion of the Delegation of Algeria, this provision was ambiguous as concerns determining what would happen to the right to vote of an intergovernmental organization, which represented a certain number of States, in its absence.

21. M. KWAKWA (WIPO) said that, if an intergovernmental organization would exercise its right to vote, it could only vote in place of the members of that organization. However, to the extent that those members decided to exercise their vote themselves, then the intergovernmental organization would not be able to vote on their behalf. He pointed out that the proposed language was similar to that used in the Geneva Act of the Hague Agreement and in several other WIPO treaties.

22. Mr. GAOUAOUI (Algeria) thanked the Secretariat for its explanation and added that in order to be able to reach a decision on this issue, the Delegation of Algeria required a clearer explanation of the meaning of the term “conversely”, which appears at the end of Article 22(4)(b)(ii). The Delegation wished to know if this term meant that if the intergovernmental organization were absent, its members could vote in its place, where appropriate.

23. Mr. KWAKWA (WIPO) said that, if any one of the members of an intergovernmental organization cast its vote, the intergovernmental organization could not cast its vote. Whether present or absent, so long as one of the members cast its own vote, then the organization could not do so.

24. The CHAIR reiterated that, if an intergovernmental organization cast its vote, none of its Member States had the right to cast their vote. However, if one of the Member States cast its vote, the intergovernmental organization had no right to do so on behalf of its Member States, which in turn also meant that the other Member States would be able to exercise their right to vote.

25. Mr. GAOUAOUI (Algeria) expressed gratitude to the Secretariat and the Chair for their clarifications but highlighted that the Delegation of Algeria understood the term “conversely” to mean that the Member States present who were members of the intergovernmental organization, which was itself also a member of the Lisbon Union, could vote in place of this organisation in its absence.

26. The PRESIDENT suggested that the question be left open.

27. The delegate of Democratic Republic of the Congo noted that his Delegation would rely on the president’s conclusions concerning Article 22(4)(b)(ii).

28. The CHAIR turned to Article 22(5) to (7). Noting no comments or objections, he concluded that the Committee agreed on those provisions.

Article 23: International Bureau

29. The CHAIR turned to Article 23.

30. Ms. FERRITER (United States of America), referring to Article 23(1), said that the assumption that the new agreement would be administered by WIPO might not necessarily be true. In that regard, she recalled that WIPO was an Organization with inclusive norm setting, established to provide a forum for a balance of powers between the unions. She recalled that some WIPO members had expressed the preference that the unions be independent, whereas

many developing countries had preferred the Organization to retain decision-making authority. She further indicated that such balance of powers had been reflected in Articles 4 and 6 of the WIPO Convention, which allowed the WIPO General Assembly, the Assembly of the Paris Union and the Assembly of the Berne Union to agree to assume or participate in the administration of the New Act but they also might not. She pointed out that the WIPO Convention did provide that WIPO had to perform the administrative tasks of the Paris Union, the special unions established in relation to that Union and the Berne Union. In that regard, she recalled that the Lisbon Union was a special union established in relation to the Paris Union, but the Lisbon Union alone was not able to determine the tasks to be performed by the Organization. She believed that the administrative tasks related to entities not members of the Paris Union would create a specific concern and, therefore, the Paris Union should give its point of view on whether a union under its umbrella could change in a significant manner to encompass entities nonmembers of the Paris Union.

31. Ms. FERRITER recalled that many Lisbon members had indicated their unawareness of the financial situation of the Lisbon Union and that the Secretariat had referred them to the Program and Budget. That document showed that the Lisbon Union was operating at a significant financial deficit, even though the treaty required it to be financially self-sufficient. According to the WIPO Convention, if three-fourths of the three Assemblies approved the result of the Diplomatic Conference and the financial situation of the Lisbon Union then they might agree that the New Act be administered by WIPO. However, they might also not approve the administration of the New Act by WIPO, in view of the past history of the Lisbon Union and, in particular, the failure to abide by the provisions of the Lisbon Agreement to hear the advice of the Coordination Committee and the significant budget deficit of the Lisbon Union caused by both the failure to increase its fees for 20 years and the failure of the Lisbon Union to collect the contributions of the countries of the Special Union where receipts from the sources of Article 11(3) had been insufficient. Consequently, the New Act might need to be administered separately. In that regard, she suggested considering an alternative and more neutral text for Article 23(1).

32. Mr. SCHMIDLIN (Italy), disagreeing with the interpretation of the WIPO Convention as presented by the Delegation of the United States of America, believed that WIPO could administer the New Act and expressed his preference for the text as it stood. He further urged the Committee to strictly focus on the pending issues.

33. Ms. HERNÁNDEZ NARVÁEZ (Mexico) noted that the Delegation of Mexico supported the statement made by the Delegation of Italy given that in its opinion those provisions had been previously discussed in the Working Group and the text appeared to be appropriate.

34. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) supported the statements made by the Delegations of Italy and Mexico.

35. Mr. KIM (Republic of Korea), aligning himself with the statement made by the Delegation of the United States of America, regretted that the Diplomatic Conference was not inclusive. He further expressed his Delegation's reservation on Article 23.

36. The CHAIR noted that there were no comments on the other paragraphs of Article 23. He postponed the discussion on the text of Article 23(1) and concluded that the other paragraphs of Article 23 were agreed by the Committee.

37. Ms. HERNÁNDEZ NARVÁEZ (Mexico) supported the work proposal of the CHAIR.

Article 25: Regulations

38. The CHAIR opened the discussion on Article 25.

39. Mr. GAOUAOUI (Algeria) referred to Article 25(2)(a) which provided firstly for unanimity and secondly for a three-fourths majority. The Delegation of Algeria wished to know how the decision would be taken should this provision allow for two options and expressed its preference in this case for the removal of the option based on unanimity so as to conserve only the three-fourths majority option.

40. Mr. KWAKWA (WIPO) clarified that Article 25 stated that, in addition to unanimity or three-fourths majority required for amendments, there were other options. In other words, the Regulations provided that some of the provisions be amended only by unanimity or only by a three-fourths majority, which in turn meant that any other provision of the Regulations could be amended by other majorities.

41. Mr. GAOUAOUI (Algeria) wished to know which provisions could be modified unanimously and which provisions could be modified by to a three-fourths majority. Taking into account these two options, the Delegation of Algeria also wished to know what principle would serve as the basis for deciding to choose one or the other option.

42. Mr. KWAKWA (WIPO) said that it would be within the competence of the Assembly to decide which majority to apply for which of the provisions in the Regulations. He believed that the Diplomatic Conference was only expected to determine the requisite majorities for amending the provisions referred to in Article 25.

43. Ms. LEE (Republic of Korea), referring to Article 25(2)(b), asked whether other WIPO treaties contained similar provisions.

44. Mr. KWAKWA (WIPO) confirmed that the Geneva Act of the Hague Agreement contained a similar provision.

45. Mr. GAOUAOUI (Algeria) expressed unease in relation to the options contained in Article 25(2)(a) in that the Delegation of Algeria did not have sufficient clarification regarding the situation that obtained in other treaties. After requesting explanations as to how this issue was to be resolved in connection with other treaties, the Delegation indicated that it believed that the two options in Article 25(2)(a) could lead to sustained debate in future Lisbon Union assemblies and conferences. It consequently reiterated its proposal to remove the option based on unanimity so as to maintain only the three-fourths majority option.

46. The CHAIR, recalling the proposal made by the Delegation of Algeria to keep only a “three-fourths majority” in the text, suggested to postpone further discussion of

Article 25(2)(a). Noting that there were no comments on Article 25(2)(c) and Article 25(3), he concluded that the Committee agreed on those provisions.

Article 26: Revision

47. The CHAIR opened the discussion on Article 26.

48. Ms. FERRITER (United States of America), for the reasons indicated during the discussion of Article 22(2)(a)(ix), proposed to put in square brackets the reference to Article 24 in paragraph (2) of Article 26. She reiterated that Article 24 itself needed to be discussed first and that the Lisbon members should decide whether amendments to that Article required full consensus or revision by a Diplomatic Conference.

49. The CHAIR noted that there were no comments with regard to Article 26(1) and concluded that the Committee agreed on that provision. Consideration of Article 26(2) would be postponed until Article 24 would have been discussed.

Article 27: Amendment of Certain Articles by the Assembly

50. The CHAIR opened the discussion Article 27.

51. Ms. FERRITER (United States of America) proposed to put in square brackets the reference to Article 24 in paragraph (1) of Article 27.

52. The CHAIR noted that there were no comments with regard to Article 27(1)(b), Article 27(2), Article 27(3) and concluded that the Committee agreed on those provisions. Consideration of Article 27(1)(a) would be postponed until Article 24 have been discussed.

Article 28: Becoming Party to This Act

53. The CHAIR opened the discussion Article 28.

54. Mr. KWAKWA (WIPO) said that, Article 28(1)(ii), the words “member of the Organization” should be added after the word “State“, as accession should only be open, under that provision, to WIPO Member States.

55. The CHAIR concluded that Article 28(1)(i) and Article 28(1)(ii) with the insertion of the words “member of the Organization” were acceptable to the Committee.

56. Ms. FERRITER (United States of America), referring to Article 28(1)(iii) expressed the view that there might be a disconnect between which IGOs would be eligible to become party to the Act and the protection that an intergovernmental organization should provide. Referring to the last line of Article 28(1)(iii), she questioned that an intergovernmental organization would be entitled to become party to the New Act if it only provided protection for appellations of origin. Since the commitment that a Contracting Party would be making under the Agreement implied a full scope of protection, she proposed to delete the words

“appellations of origin or”. She further wondered whether or not a Contracting Party not providing protection for geographical indications in request of, for example, non-agricultural products would be in compliance with the New Act. Finally, she sought clarification as to whether an intergovernmental organization would only file geographical indications and appellations of origin protected at the regional level or also those protected only in one of its member State.

57. Mr. HÖPPERGER (WIPO), in reply to the question raised by the Delegation of the United States of America on Article 28(1)(iii), quoted Article 9 of the Basic Proposal, which set out the commitment to protect subject matter that would be covered by the New Act. In particular, where the provision stated that “Contracting Parties that do not distinguish in their national or regional legislation as between appellations of origin and geographical indications shall not be required to introduce such a distinction into their national or regional legislation”. Consequently, the reference to appellations of origin and geographical indications in Article 28(1)(iii) should be kept in the alternative.

58. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of), recalling that the Agreement aimed at protecting appellations of origin and geographical indications, believed that subparagraph (iii) of Article 28(1) should be retained as it read.

59. Ms. OBANDO (Costa Rica) expressed concern regarding how the provision would be applied in the last part of section (iii). The concern was whether, through this provision, the possibility was being created for the registration of geographical indications that had been registered at the community level, or whether the provision whereby only those from a country that was already party to the Lisbon Agreement could register would be maintained.

60. The CHAIR said that Article 28(1)(iii) applied in respect of intergovernmental organizations which granted regional titles of protection.

61. Mr. HÖPPERGER (WIPO) confirmed that the provision referred to regional titles of protection available under the applicable regime of certain intergovernmental organizations. This would not prevent individual Member States of such an organization to become party to the New Act, to the extent that the organization in question permitted Member State competence for the protection of appellations of origin or geographical indications.

62. The CHAIR thanked the Secretariat for this clarification. He further noted that there were no comments in respect of Article 28(2) and (3) and concluded that the Committee agreed on the Texts of those provisions.

Article 1: Abbreviated Expressions

63. The CHAIR, recalled that Main Committee I had referred the pending issue concerning the definition of “Contracting Parties” in Article 1(xiv) to Main Committee II. He noted that there were no comments and concluded that the Committee agreed with the current text of Article 1(xiv).

Article 29: Effective Date of Ratifications and Accessions

64. The CHAIR opened the discussion on Article 29.

65. Mr. GAOUAOUI (Algeria) raised the question concerning the figure proposed in Article 29(2), according to which five parties were sufficient to fulfill the required conditions laid out in Article 28, having deposited their instruments of ratification or accession to allow the new Act to enter into force. He wished to know whether this figure was also limited to five countries in the other treaties administered by WIPO.

66. Mr. KWAKWA (WIPO) indicated that the Berne Convention, the Madrid Agreement, the Locarno Agreement, the Convention for the Protection of Producers of Phonograms and the Vienna Agreement required five States to deposit their instruments of ratification or accession to enter into force. The Madrid Protocol and the Hague Agreement required four instruments of ratification or accession to enter into force. The two most recent WIPO treaties, i.e. the Beijing Treaty and the Marrakesh Treaty, required higher numbers of, respectively, 30 and 20 instruments.

67. Mr. KIM (Republic of Korea), expressing his concern with respect to the number of ratifications and accessions required for the New Act to enter into force, reserved his Delegation's position on Article 29(2). The New Act would seriously influence national laws and the global intellectual property system, he regretted that not all WIPO Member States had been included in the decision-making process.

68. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of), referring to eligible parties under Article 29(2), wondered whether those included also intergovernmental organizations.

69. Ms. LU (China) sought clarification about the method for calculating the date of entry into force of the New Act.

70. Mr. KWAKWA (WIPO), in reply to the question raised by the Delegation of China, said that Article 29(2) provided that the New Act would enter into force three months after five eligible parties, as referred to in Article 28, had deposited their instruments of ratification or accession. Referring to the question raised by the Delegation of Iran (Islamic Republic of), he said that eligible parties according to Article 28(1) included States and intergovernmental organizations. Therefore, any combination of five States and intergovernmental organizations could cause the treaty to enter into force.

71. Mr. GAOUAOUI (Algeria) suggested amending the number of parties meeting the conditions stipulated in Article 29(2). Based on the current number of Member States in the Lisbon Agreement, he suggested increasing the number of parties from 'five' to 'ten'.

72. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) said that while his Delegation was flexible as to the number of eligible parties, it preferred that those be States.

73. The CHAIR said that at present only two intergovernmental organizations offered protection to appellations of origin and geographical indications at a regional level. In any case, intergovernmental organizations were constituted by their Member States, which had to give their agreement to the organization to become a member of the New Act. For example,

although OAPI had four Member States that were party to the Lisbon Agreement, OAPI could only accede to the New Act if it was mandated by all its 17 Member States to do so. However, when it would accede, it would only count as one eligible party having acceded.

74. The delegate of Democratic Republic of the Congo informed the Committee that the wording of this paragraph also appeared in other legal texts of the same status. While stressing its flexibility, the Delegation was inclined to retain that wording.

75. Ms. FERRITER (United States of America) emphasized that the new treaty should not be linked to the number of Lisbon members that would join. She believed that, as a new international agreement, it could also be five non-Lisbon members that might cause the New Act to enter into force.

76. The CHAIR confirmed that the provision did not require that five Lisbon Member States ratify the treaty but referred to any Member States of WIPO. The Chair also noted that there was no support for the proposal by the Delegation of Algeria to increase the number of States in Article 29(2) from five to ten.

77. Mr. KIM (Republic of Korea) reiterated that his Delegation reserved its position concerning the provision of Article 29(2).

78. The CHAIR recalled that according to the Rules of Procedure, any proposal to amend the Basic Proposal, had to be supported by a Member State of the Lisbon Union. Further, he noted that there was no request for the floor on Article 29(3) and, therefore, considered that its text was accepted by the Committee.

79. Ms. FERRITER (United States of America), referring to individual fees, recalled that its February 1, 2015 submission had proposed her Delegation in the following language to be included in Article 29(4) after “*mutatis mutandis*”: “Acceding States and intergovernmental organizations may specify, in a declaration, that their national laws require the payment of an individual fee, and that no previously registered international registration would be considered for protection in that Contracting Party until that fee had been paid. In such an instance, for purposes of that Contracting Party the date of international registration shall be the date the individual fee has been paid”. Then, in the next sentence, her Delegation would delete the word “however” and begin the sentence with the word “the”. She also indicated that after the words “intergovernmental organization may” her Delegation would insert the word “also”. Finally, recognizing that there was bracketed text in Article 17, her Delegation suggested that the words “and the periods referred to” in Article 17 also be bracketed until Main Committee I had finished its work on Article 17.

80. Ms. KULIKOVA (Russian Federation) said that her Delegation preferred to postpone the discussion on Article 29(4) until the MC I had agreed on Article 7(5). She also asked what the “territory of an intergovernmental organization” in Article 29(4) implied and whether other WIPO treaties used similar wording.

81. Mr. KWAKWA (WIPO) replied that the reference to the territory of the acceding intergovernmental organization should be understood as the territories of the States comprising the intergovernmental organization.

82. Ms. FOUKS (France) requested clarification concerning the meaning of the terms “advantages of this Act” contained in Article 29(4), and wished to know whether these terms concerned all provisions of the act or only some of them.
83. Ms. MOORE (Australia) expressed her Delegation support for the proposal made by the Delegation of the United States of America and the rationale behind it.
84. Mr. KWAKWA (WIPO), in reply to the comment made by the Delegation of France, said that, for legal certainty, using the word “provisions” instead of “benefits” might be considered.
85. Ms. FERRITER (United States of America) suggested a technical amendment by introducing the term “and geographical indications” after the words “appellations of origin” in Article 29(4).
86. Ms. CERENZA (Italy) was also of the view that the wording of Article 29(4) was not clear.
87. The CHAIR proposed to revert to Article 29(4) after the Committee had agreed on Article 7(5) and Article 17.

Article 30: Prohibitions of Reservations

88. The CHAIR noted that there were no comments on Article 30 and concluded that the Committee agreed on the text of that provisions.

Article 31: Application of the Lisbon Agreement and the 1967 Act

89. The CHAIR opened the discussion Article 31.
90. Ms. CERENZA (Italy) expressed the view that the provision contained in Article 31(1) was not clear and, in response to a request from the Chair, said that her Delegation would present a proposal in writing.
91. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) sought clarification on the aim of Article 31(1). He drew the attention of the Committee to Article 31 which referred to “States Party” while Article 29 referred to “eligible party”, which comprised also intergovernmental organizations.
92. Mr. FICSOR (Hungary) pointed out that Article 31(1) could only be applied in respect of States, because only States could be parties to the current Lisbon Agreement.
93. The CHAIR proposed to postpone the discussion on Article 31.

Article 32: DenunciationArticle 33: Languages of this Act; SignatureArticle 34: Depositary

94. The CHAIR noted that there were no comments on Articles 32, 33 and 34 and concluded that the Committee agreed on the texts of those provisions.

Listing made by the Chair of the remaining issues

95. The CHAIR recalled that the Committee agreed to keep open for further discussions and deliberations Article 22(2)(a)(ix), Article 24, Article 25(2)(a), Article 26(2), Article 27(1), Article 29(4) and Article 31(1).

96. Ms. CHARIKHI (Algeria) recalled that her Delegation had proposed amendments to Article 22(3)(b), Article 25(2)(a) and Article 29(2).

97. Ms. FOUKS (France) sought clarification on the list of pending items, in particular regarding Article 29(2), as it had understood that the Committee had agreed not to change this provision.

98. The CHAIR recalled that a proposal by the Delegation of Algeria to Article 29(2) had been submitted but had not been supported by any other Member State. However, he expressed the readiness to further discuss it, if the Committee, so agreed.

99. Ms. CHARIKHI (Algeria) highlighted that her Delegation wished to maintain its proposal regarding Article 29(2) and reserved the right to review this proposal.

100. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) expressed the need for more time to consider the merits of the proposal to Article 29(2).

101. The CHAIR proposed to revert to Article 29(2) at a later stage and adjourned the meeting.

Second Meeting Saturday, May 16, 2015 Afternoon

Secretariat Note Rev. 1 (May 15, 2015)Informal Revision to Administrative and Final Provisions

102. The CHAIR recalled that the list of pending issues comprised the provisions of Article 22(2)(a)(ix), Article 22(3)(b), Article 22(4)(b), Article 24, Article 25(2)(a), (b) and (c), Article 26(2), Article 27(1)(a), Article 28(1)(iii), Article 29(2), Article 29(4) and Article 31. He proposed to start the discussion on Article 24 and invited the Secretariat to present the

document entitled “Secretariat Note Rev. 1 (May 15, 2015), Informal Revision to Administrative and Final Provisions”.

Article 24: Finances

103. Mr. KWAKWA (WIPO), introducing the proposals concerning Article 24, said that those reflected the constitutional reform decisions taken by the Assemblies of Member States, including the Assembly of the Lisbon Union, in 2003. For the sake of clarity, he proposed to reformulate the last sentence of paragraph (4) to read: “Intergovernmental organizations shall be considered to belong to contribution class 1 (one), unless otherwise unanimously decided by the Assembly”.

104. Ms. NARAYANASWAMY (WIPO) stated that the Organization had moved over the last two decades from being a contribution-financed Organization to a fee-for-services financed Organization. In the 2014-2015 Biennium, fees from services had represented approximately 94% of the Organization’s income. By a decision of its Member States, the Organization had adopted the unitary contribution system whereby Member States made a single contribution, based on the unit value and the class to which they belonged. She informed that the budget of the Organization had been prepared by program and by result, with the presentation of the unions’ view of the budget based on an allocation methodology described in each program and budget proposal approved by the Member States. In the context of being primarily fee financed and in accordance with prudent financial management principles, the Organization must endeavor, in agreeing to any revision, to make provisions for more or greater financial sustainability of all unions. She said that a working capital fund, in a fee financed structure, was a mechanism whereby funds might be advanced by Member States to tide over the temporary shortfalls in liquidity or to finance investments decided upon by Member States. She added that the working capital funds were separately reported on in each financial period. The concept of a working capital fund was also embedded in the reserves of working capital policies of the Organization as approved by Member States in 2000 and 2010. Finally, she said that Article 24 as revised addressed all those principles and concepts.

105. The CHAIR opened the discussion to Article 24(1) [*Budget*]. He recalled that, as reflected in the revised Secretariat Note, paragraph (1) read: “The income and expenses of the Special Union shall be reflected in the budget of the Organization in a fair and transparent manner”. Noting that there were no comments or questions, he concluded that Main Committee II agreed on the text of Article 24(1).

106. The CHAIR then turned to Article 24(2) “[*Sources of Financing of the Budget*], as reflected in the revised Secretariat Note, which read: The income of the Special Union shall be derived from the following sources:

- (i) fees collected under Article 7(1) and (2);
- [(ii) maintenance fees, as referred to in Article 7(3);]
- (iii) proceeds from the sale of, or royalties on, the publications of the International Bureau;

(iv) gifts, bequests, and subventions;

(v) rent, investment revenue, and other, including miscellaneous, income;

[(vi) any contributions of the Contracting Parties decided by the Assembly of the Special Union].”

107. The CHAIR observed that, as paragraph (2) listed sources of income which would finance the operations under the Lisbon System, the main question was whether the provision gave sufficient flexibility to the Assembly of the Lisbon Union or should list more options for financing the Lisbon System.

108. Mr. GAOUAOUI (Algeria) requested two changes to this article. The first concerned Article 24(2)(ii), where he suggested removing the maintenance fees in force under Article 7(3). He noted, however, that the talks were ongoing in Main Committee I and highlighted that the proposal of the Delegation of Algeria was in line with the suggestion to remove Article 7(3) during the work of Main Committee I. His second proposal concerned Article 24(2)(vi), regarding contributions from Contracting Parties. His Delegation instead favored a provision to make these contributions compulsory once the receipts originating from the sources mentioned were not sufficient to cover expenditure. However, considering that this second part of the sentence had been deleted following a proposal from a delegation, the Delegation of Algeria suggested the addition of the word “voluntary” to the following proposal: “any voluntary contribution from Contracting Parties decided by the General Assembly, so that contributions are voluntary and not statutory on the basis of the positions of Member Countries.”

109. Mr. SCHMIDLIN (Italy) expressed the support of his Delegation for the proposals made by the Delegation of Algeria on items (ii) and (vi) of Article 24(2). As regards item (v), he questioned the deletion of the term “interest”.

110. Ms. NARAYANASWAMY (WIPO) said that the term “investment revenue” in Article 24(2)(v) included interests that may be earned, if any. In reply to a question by the Chair, she said that WIPO was not incurring negative interest rates.

111. Ms. HERNÁNDEZ NARVÁEZ (Mexico) noted that her delegation would suggest deleting subparagraph 3(ii). Concerning subparagraph (vi), the Delegation added that it fully understood the Controller’s remarks, which seemed to be highly relevant and in line with the decisions taken in the meetings to have a unified budget. The Delegation stated that according to its understanding of this section, the decision regarding additional contributions from the Contracting Parties depended on the Lisbon Assembly and to that extent, the proposal presented by the Delegation of Algeria was not very clear. An additional paragraph would need to be added to read “any voluntary contribution from the Contracting Parties”. Its understanding was that subparagraph (vi) was intended to allow the assemblies to take a decision to discuss a possible solution should the system go into deficit. As a positive sign from the members of Lisbon if that occurred, the Delegation believed that the language proposed was fairly flexible and was not prejudicial. Nonetheless, the Delegation of Mexico wished to have further clarification from the Delegation of Algeria regarding the intention of its proposal.

112. Mr. GAOUAOUI (Algeria) recalled that, concerning subparagraph (vi), it agreed with the deleted text that provided for exceptional income when the sources of funding of the Lisbon Union were not sufficient to cover expenditure. The Delegation noted that in accepting to the deletion of this proposal, Algeria was opting for a positive and flexible approach, but suggested that the contribution from the Contracting Parties be voluntary. That was why the Delegation would be in favor of retaining the deleted sentence in brackets.

113. Mr. MOLDOVAN (Republic of Moldova) expressed his Delegation's support for the statements made by the Delegations of Algeria and Italy on paragraph (2)(ii) and (vi). He stated that his Delegation was flexible to introduce another item (vii) to provide for voluntary contributions.

114. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) aligned himself with the statements made by the previous Delegations with regard to the deletion of paragraph (2)(ii). Concerning item (vi), the Delegate understood that contributions were obligatory. He expressed the view that the concept of voluntary contributions was not clear and believed that the Assembly of the Special Union should decide on that matter.

115. Ms. MORENO (Nicaragua) aligned herself with the position of Algeria and the other Member States with regard to Article 24(2), in respect of which it had been agreed that subparagraph (ii) regarding maintenance fees be deleted. The Delegation also indicated that, with regard to subparagraph (vi), it preferred that these contributions be determined voluntarily, depending on the situation of the Member States, and that the paragraph stating "where revenue from the sources mentioned in paragraphs (i) to (v) are not enough to cover expenses" be retained.

116. Ms. VIEIRA LOPES (Portugal) supported the deletion of paragraph (2)(ii) on maintenance fees.

117. MS. LAUMONIER (France) noted that her delegation did not wish Article 24(2)(ii) to be included and was opposed to the maintenance fees in force. Concerning Article 24(2)(vi), the Delegation favored the amendment supported by the Delegation of Algeria, that is, a voluntary contribution from the Contracting Parties.

118. Ms. KOPECKÁ (Czech Republic) shared the position expressed by previous Delegations concerning the deletion of paragraph (2)(ii).

119. Mr. ROSSI COVARRUBIAS (Peru) disagreed with the inclusion of maintenance fees at subparagraph (ii). Concerning subparagraph (vi), the Delegation would welcome a wording where reference could be made to a voluntary contribution from members.

120. Ms. COTTON (United States of America) believed that it was critically important that the Lisbon Union be financially self-sustaining and noted that many Delegations agreed on that. The Delegate observed that, even where there were obligations under the current Lisbon Agreement to fund the system, members did not fulfill those obligations. Consequently, there was a deficit, and the deficit had been growing and not addressed. Expressing her concerns on the funding of the system, she believed that it was imperative that paragraph (2)(ii) on maintenance fees and paragraph (2)(vi) on contributions remain in the text. She suggested that item (vi) read: "Contributions of the Contracting Parties, if and to the extent to which

receipts from the sources indicated in items (i) to (v) do not suffice to cover the expenses of the Special Union”.

121. The Delegate believed that the amount of contributions should not be decided by the Assembly of the Lisbon Union but should be determined in a provision of the Act. She recalled that her Delegation’s submission dated February 1, 2015, advanced a particular provision which identified the amount of contributions of each Contracting Party being proportional to the relative number of registrations under the Lisbon System. She acknowledged that that proposal had been supported by the Delegation of Israel, as well as by other Delegations. She also recalled that the maintenance fees could be paid by the Contracting Parties themselves and operate in the same way as contributions based on the notion of proportionality. The Delegate believed that the idea of voluntary contributions represented a step backwards from the original Lisbon Agreement, while all had expressed the intention to go a step forward and to move to financial self-sustainability.

122. Mr. KUMER (United Kingdom), noting the number of modifications to Article 24, believed that in order to assess its overall impact, it should be analyzed in its entirety. In his view, the Committee should not adopt individual paragraphs until it saw the final version of Article 24. Further, he wondered whether, after the deletion of Article 24(1)(a), the budget of the Special Union would be replaced by a working capital fund and sought explanation on that issue. In relation to item (vi), he believed that it should stay unchanged, in line with the 2003 constitutional reform and its principles. He also believed that this would make the system sustainable, which was in the interest of all WIPO Member States.

123. Ms. KULIKOVA (Russian Federation) believed that maintenance fees under Article 7(3) and contributions by the Contracting Parties were two alternative sources of income for the Lisbon Union. Her Delegation preferred maintaining Article 24(2)(ii) on maintenance fees, as referred to in Article 7(3), and deleting Article 24(2)(vi) referring to contributions by the Contracting Parties.

124. Ms. NARAYANASWAMY (WIPO), in reply to a request by the Chair for clarification on the mechanism of allocation of income, said that the contribution income was allocated entirely to the contribution financed unions. Fee income from the PCT, Madrid, Hague and Lisbon registration systems were allocated entirely to the respective unions. Since the Organization moved to the unitary contribution system, the contributions went directly to the contribution financed unions and the fees collected within a certain union were funding that individual union.

125. The CHAIR suggested to amend Article 24(2)(vi) to reflect that there were mandatory contributions, to be paid irrespective of a decision by the Assembly and voluntary contributions, if deemed necessary by the Member States. Summarizing the discussion, the Chair noted that the majority of Lisbon Union members had expressed their preference for deleting paragraph (2)(ii) on maintenance fees as incompatible with the principles of the Lisbon System, while many Observer Delegations had been in favor of maintaining it as an option for financing. Concerning paragraph (2)(vi), opinions were divided. Some Member States had expressed their preference for the text of the Basic Proposal and that others had expressed their preference for the new text, while showing flexibility. Therefore, the Chair requested the Secretariat to produce for the next meeting a revised version of paragraph (2)(vi), which would reflect the comments expressed during the discussion.

126. The CHAIR turned to Article 24(3) [*Fixing of fees; Level of the Budget*], as reflected in the revised Secretariat Note and pointed out that it corresponded to Article 24(4) of the Basic Proposal with the only change being a reference to a previous paragraph.

127. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of), referring to Article 24(3)(a), proposed to put in square brackets the reference to contributions under Article 24(2)(vi), since there was not yet a decision on whether Article 24(2)(vi) would provide for contributions or not.

128. The CHAIR noted that since paragraph (3)(a) already contained square brackets starting from the end of the second line after “Director General” to the end of the paragraph, no additional square brackets were needed. The Chair recalled that there was agreement on the first part of the provision, reading: “The amounts of the fees referred to in paragraph (2) shall be fixed by the Assembly on the proposal of the Director General”. The Chair sought the opinion of Delegations on whether to delete the square brackets or to handle the text in a different way.

129. Ms. KOPECKÁ (Czech Republic) expressed her Delegation’s preference for the deletion of the text in square brackets.

130. Ms. HERNÁNDEZ NARVÁEZ (Mexico) wished to retain paragraph 3(a) 3 without the text in brackets. The Delegation noted that it was the standard language used in other WIPO treaties, for example, in the Madrid System, where the text was fairly general and did not include such specific provisions as those included in brackets. Concerning subparagraph (b), the amendments proposed by the Secretariat seemed to be appropriate and were in fact in line with the changes made to the financial regulation of the Organization in the previous year, precisely in order to anticipate what would happen if there were no agreement on the approval of the budget.

131. Mr. MOLDOVAN (Republic of Moldova), agreeing with the arguments presented by the Delegation of Mexico, expressed his Delegation’s preference for removing the text in square brackets.

132. Mr. GAOUAOUI (Algeria) favored the removal of the text in brackets in Paragraph 3)a) in that, if the proposal presented by the CHAIR were approved, the text in brackets would be an exceptional situation, that is, voluntary contributions that could be decided by the Assembly if the sources of funding were not adequate.

133. Ms. COTTON (United States of America) expressed her preference for retaining the text that appeared in square brackets in paragraph (3). She believed that it was important that the system be self-financed, through a combination of more elements, such as fees and contributions. In her view, fees were more predictable, regularized and would not require continual monitoring by other bodies of WIPO to ensure that contributions had been paid. Indicating her flexibility on any combination of fees and contributions, her primary concern was that the expenses needed to be covered by the income of the Lisbon System, and not by other WIPO systems.

134. Mr. FICSOR (Hungary) expressed his Delegation's support for the statement made by the Delegation of the Czech Republic. While the text in square brackets was standard wording used in other legal instruments administered by WIPO and corresponded to a provision of the current Lisbon Agreement, he believed that it might create a wrong impression that, as a general rule, the fees collected under the Lisbon System should be sufficient to cover the expenses of the Lisbon Union. In that case, the option was to raise the fees. However, that would make it difficult for users to access the system. Therefore, another option could be to find other possibilities for covering the costs or the expenses of administering the system. In that context, he expressed his Delegation's readiness to explore other means of financing the system, including contributions by Contracting Parties, or even the establishment of a working capital fund. While his Delegation was flexible on the text within the square brackets and did not object to its inclusion, its preference was to remove the text, as it did not correspond to the financial reality.

135. Mr. KUMER (United Kingdom) reiterated the aim of the Diplomatic Conference to modernize and improve the Lisbon System, as well as to make it sustainable. He also reiterated his Delegation's flexibility and openness to discuss any kind of mechanisms that would contribute towards that goal. Maintenance fees and contributions would give some guarantees towards financial balance. Therefore, while being willing to discuss different mechanisms and combinations, his Delegation preferred to retain the language which was in square brackets in paragraph 3(a).

136. Mr. SCHMIDLIN (Italy), noting that the Lisbon System had a deficit of 2.3 million Swiss francs, expressed his commitment to find mechanisms to make the system sustainable. While agreeing with the text of paragraph (2)(vi), he believed that the statement made by the Delegation of Hungary in respect of paragraph (3)(a) should be taken into account. He observed that if the letter of that draft provision was followed, fees would need to be increased to such an amount that those would not be feasible and would jeopardize the attractiveness of the system. Expressing his Delegation's flexibility on retaining that provision, he believed that its wording might generate different interpretations. Finally, he reiterated his openness to explore mechanisms for reaching a better form of sustainability of the Lisbon System.

137. Mr. MOLDOVAN (Republic of Moldova) sought clarifications on the meaning of the words "under normal circumstances" in paragraph (3)(a) and whether the word "revenue", used for the first time in paragraph (3)(a), had the same meaning as the word "income", used in paragraphs (1) and (2).

138. Ms. NARAYANASWAMY (WIPO), in reply to a request by the Chair for clarification on whether the regular budget of WIPO was contributing to the Lisbon Union, said that the Lisbon Union was not a contribution financed union. The Lisbon Union, like the PCT, Madrid and Hague unions, was a fee-financed union. Under the current union allocation methodology, the Lisbon System derived its income from fees, miscellaneous and other income streams of the Organization, as described in the WIPO Program and Budget.

139. The CHAIR noted that different views had been expressed during the discussion. However, all Delegations shared the view that the Lisbon System needed a clear financing mechanism that would permit its sustainability.

140. Mr. KWAKWA (WIPO), in reply to a question by the Delegation of the United Kingdom on whether the 2003 decisions on the constitutional reform had been taken into account, said that those decisions had been reflected in Article 24(1), while the idea of the unitary contribution system had been reflected in the whole Article 24.

141. Ms. NARAYANASWAMY (WIPO), in reply to the question raised by the Delegation of the Republic of Moldova, said that the words “revenue” and “income” were used interchangeably in the text.

142. Ms. COTTON (United States of America), referring to the bracketed text in paragraph (3), appreciated the comments made by the Delegations of Hungary and Italy. Observing that the number of registrations under the Lisbon System was less than under the Madrid System, she believed that funding the system merely on fee revenue would be difficult. Expressing her flexibility in finding a solution by combining different elements, she proposed to refer in the bracketed text to other elements, namely contributions established and assessed under paragraph (2)(vi) and paragraph (4). In conclusion, the Delegate proposed that the bracketed text in paragraph (3) be amended, so as to read: “and shall be so fixed that the revenue of the Special Union should, in combination with the contributions established and assessed under paragraph (2)(vi) and paragraph (4), be sufficient to cover the expenses of the International Bureau for maintaining the international registration service”. Thus, she proposed to delete the last part of the sentence: “without requiring payments of the contributions referred to in paragraph (2)(vi)”.

143. Mr. FUSHIMI (Japan), attaching great importance to the financial sustainability of the Lisbon Union, appreciated the statements made by the Delegations of Hungary and Italy on the difficulty to cover the expenditure of the system by fees. He believed that the proposal made by the Delegation of the United States of America was a practical and good solution in order to provide for the financial sustainability of the Lisbon Union and, therefore, expressed his Delegation’s support for it.

144. Mr. SCHMIDLIN (Italy), referring to the proposal put forward by the Delegation of the United States of America, wondered whether the notion “revenue of the Special Union” referred to all revenues, including the contributions. On the deletion of the last sentence, he reserved his Delegation’s position.

145. Mr. FICSOR (Hungary) questioned that the word “revenue” referred to income deriving from all the sources mentioned in paragraph (2), and believed that the provision probably meant that the fees had to complement those sources of income, so that all the revenue derived from those sources should, under normal circumstances, be sufficient to cover the expenses. He further proposed to clarify the provision by adding language to indicate that the fees, together with other income deriving from the sources identified in other items of paragraph (2), should be sufficient to cover the expenses.

146. The CHAIR requested the Secretariat to prepare a draft text based on the proposal made by the Delegation of the United States of America and the statements made by the Delegations of Hungary and Italy. He also suggested using either the word “income” or “revenue” for the sake of simplicity. He noted that there was agreement that the Lisbon system could not be self-sustaining only on the basis of fees and that it needed other income sources.

147. Mr. FICSOR (Hungary) proposed an alternative wording for paragraph (3)(a) starting from the square brackets: “and shall be so fixed that, together with the income derived from other sources, the revenue of the Special Union should under normal circumstances be sufficient.”

148. The CHAIR turned to Article 24(3)(b) and invited the Delegations to express their views on the provision. He noted that there were no comments and concluded that the Committee agreed on the text. Thereafter, he turned to Article 24(4) [*Establishing the Contributions Referred to in Paragraph 2(vi)*].

149. Ms. COTTON (United States of America) believed that, instead of establishing the class system for the amount of contributions, those contributions should be assessed proportionally to the relative number of registrations of the Contracting Party in the system. Therefore, she suggested replacing the text in paragraph (4) with a simple sentence that would read: “The contributions of each Contracting Party should be proportional to their relative number of registrations in the Lisbon System”.

150. Mr. SCHMIDLIN (Italy), while recognizing the principle behind the proposal made by the Delegation of the United States of America, said it was difficult to support it for reasons related to the attractiveness of the system. Developing countries with a high number of geographical indication registrations risked paying more than developed countries with lower geographical indication registration activity. In his view, a class system was more suitable for establishing the special contributions, as it better reflected the level of development of the countries members of the Lisbon Union. Finally, thanking the Delegation of the United States of America for its proposal, he believed that it required more time for consideration.

151. Ms. LAUMONIER (France) fully supported the position and the explanations provided by the Italian Delegation with regard to reaction of the Delegation of the United States of America to the proposal.

152. Mr. MOLDOVAN (Republic of Moldova), while partially agreeing with the arguments presented by the Delegation of Italy, was in favor of the proposal made by the Delegation of the United States of America.

153. Ms. KOPECKÁ (Czech Republic) expressed her support for the statements made by the Delegations of Italy and France. She believed that a contribution system as proposed by the Delegation of the United States of America would not be an incentive to join the Lisbon System and to file applications, especially for developing countries.

154. Mr. KUMER (United Kingdom) wondered whether intergovernmental organizations would count as one class contributor, regardless of whether the Member States belonging to that intergovernmental organization were also members of the Lisbon System.

155. Mr. KWAKWA (WIPO) replied that since an intergovernmental organization would be a separate member of the system, it would count as one class contributor.

156. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of), expressing his preference for a flexible approach without fixed contributions, supported the text as it stood. However, a

provision could be added to provide for periodical reassessments of those contributions by the Assembly of the Lisbon Union.

157. The CHAIR, summarizing the discussion on paragraph (4), noted that some Delegations had expressed flexibility and support for that paragraph, while other Delegations needed more time for consideration of certain issues. He announced that the Committee would revert to Article 24(4) at a later stage and turned to Article 24(5) [*Working Capital Fund*].

158. Ms. HERNÁNDEZ NARVÁEZ (Mexico) requested further clarification on the activities to be financed by this working capital fund, as working capital funds usually served to cover costs at the beginning of each year, pending the receipt of contributions. The Delegation of Mexico added that this was standard procedure in international organizations, but for the purposes of the Lisbon System, it was not completely clear how this working capital fund would be applied and to what extent it would have to cover costs should funds be required.

159. Ms. NARAYANASWAMY (WIPO), in reply to the question raised by the Delegation of Mexico, referred to the General Provisions of the WIPO Financial Regulations and Rules, which read: “Working capital funds shall mean funds established for providing advance financing of appropriations should there be a temporary liquidity shortfall and for such other purposes as the Assemblies of Member States and of the unions, each as far as it is concerned, shall decide.”

160. Ms. HERNÁNDEZ NARVÁEZ (Mexico) stated that she had understood it as such, but believed that this working capital fund would be useful for the Union in that it could draw on those funds should there actually be liquidity problems, provided that the fund was restored as cashflow found its way back into the system, that is, through fees. The Delegation emphasized that it would be a good idea for the system to be more flexible and sustainable, and above all, predictable for the current expenditure of the system, and consequently the Delegation of Mexico supported the proposal.

161. Mr. GAOUAOUI (Algeria) thanked the Chair for the clarifications provided following the question by the Delegation of Mexico. The Delegation of Algeria recalled that it was not completely in favor of the proposed text. However, concerning the working capital, it was the Delegation’s understanding that it was composed of the first instalment of the annual contribution of a Member Country, to which a certain percentage was allocated and that it was paid only once. Furthermore, once it was exhausted, the fund was automatically replenished by other contributions, therefore retaining a certain amount to ensure a certain level of liquidity for the functioning of the Lisbon Union. The Delegation underlined, however, that in the current wording, this provision anticipated that “the working capital shall be made up of payments made in advance by each member of the Special Union”. In this respect, the Delegation indicated that it was not in favor of this wording, as it advocated several payments (“the payments”) made in advance by each member.

162. Mr. SCHMIDLIN (Italy) welcomed the provision and expressed his Delegation’s willingness to consider it.

163. Ms. NARAYANASWAMY (WIPO), in reply to a comment by the Delegation of Algeria concerning the periodicity of contributions to the Working Capital Fund, stated that

the provision foresaw that such decisions would be taken by the Member States of the Special Union. They would decide how and when those advances would need to be made, based on a proposal from the Secretariat.

164. The CHAIR observed that the provision was flexible and allowed the Lisbon Union Assembly to decide on whether it would be a single contribution or a periodical, as well as its proportion and terms of payment.

165. Ms. VIEIRA LOPES (Portugal), reserved her Delegation's position on the provisions in view of its possible implication

166. Mr. MOLDOVAN (Republic of Moldova) expressed his Delegation's support for Article 24(5).

167. Ms. LAUMONIER (France) stated that the Delegation of France aligned itself with the statements made by the Delegations of Portugal and Italy, and that it wished to assess the impact of this new wording. The Delegation therefore expressed reservations about the new proposed wording of Article 24.5).

168. The CHAIR announced that the Committee would revert to Article 24(5) at a later stage and turned to Article 24(6) [*Advances by Host State*] and Article 24(7) [*Auditing of Accounts*]. Noting that there were no comments, he concluded that Main Committee II agreed on the text of Article 24(6) and (7).

Article 22: Assembly of the Special Union

169. The CHAIR turned to Article 22(2)(a)(ix), recalling that the question was whether to accept the text as it stood, i.e., "adopt amendments to Articles 22 to 24 and 27" or to remove the reference to Article 24 from that provision.

170. Mr. KWAKWA (WIPO), in reply to a request for clarification from the Delegation of Iran (Islamic Republic of), recalled that a request to put the reference to Article 24 in square brackets had been made, as the decision to allow the Assembly to adopt amendments to Article 24 was pending.

171. Ms. COTTON (United States of America) recalled that her Delegation had requested to bracket the reference to Article 24 in Article 22(2)(a)(ix), Article 26(2) and Article 27(1). That request was based on the concerns raised on the concept of tacit amendment, which allowed the amendment of a treaty by a three fourths majority. Thus, one quarter of the members of the Assembly would be bound to a treaty provision they did not agree to. Similar provisions appeared in several WIPO treaties. The Geneva Act of the Hague Agreement allowed for Article 24 to be amended by the Assembly. However, the distinction between the Geneva Act of the Hague Agreement and the New Act of the Lisbon Agreement was that the New Act contained provisions on special contributions as one of the sources of financing for the budget and the Hague Agreement did not.

172. The Delegate, pointing out that the Committee had been discussing intensively the sources of financing provided in Article 24(2), noted that a variety of opinions had been

expressed on that matter. If the Committee decided and agreed on those sources of financing, the reference to Article 24 in Article 22(2) gave the possibility to amend Article 24. That could lead to a situation where a subset of Lisbon members, under the New Act, could decide to amend the sources of financing that the Diplomatic Conference had agreed upon with a three-fourths majority. That, potentially, could lead to the same financial situation in which Member States found themselves today, where a potential deficit could develop and that deficit would have to be addressed by non-parties to the New Act, as well as by other WIPO registration systems. Her Delegation was ready to discuss the referencing of all the other provisions of Article 24, but not of Article 24(2). In view of the concerns on including Article 24 in the tacit acceptance provisions of Article 22(2)(a)(ix), Article 26(2) and Article 27(1), she requested that all those references to Article 24 be bracketed.

173. Mr. SCHMIDLIN (Italy) believed that leaving a certain margin of maneuver to the Assembly provided for more flexibility and rapidity, potentially avoiding the holding of a Diplomatic Conference, in case other sources of financing needed to be considered.

174. The CHAIR postponed the discussion on Article 22(2)(a)(ix) and turned to Article 22(3)(b) [*Quorum*]. Recalling that the Delegation of Algeria had submitted a proposal on that paragraph, he invited the Delegation of Algeria to present it.

175. Mr. GAOUAOUI (Algeria) referred to the text proposed by the Delegation of Algeria, which was distributed by the Secretariat. The Delegation noted that if the 28 members of the Assembly of the Union of Lisbon were taken into account, as well as the ratios presented in the initial wording of Article 22(3)(b), the number of delegations that would be able to make binding decisions for all the Member States of the Assembly would be between 9 and 14. It stated that this was inadmissible and unacceptable to the Delegation of Algeria. The Delegation of Algeria therefore suggested increasing the number of countries that could take decisions from one-half to two-thirds, but equal to or more than half, rather than one-third of the members of the Assembly.

176. Mr. KWAKWA (WIPO), pointed out that the language of Article 22(3)(b) was identical to the corresponding provisions of the Paris Convention, the Singapore Treaty, the Lisbon Agreement, the Geneva Act of the Hague Agreement, the Patent Law Treaty and the Madrid Protocol. The suggestion to replace one half by two thirds and one third by a half would appear to be impracticable, given that under the 1967 Act of the Lisbon Agreement the majorities would remain one-half and one-third.

177. Mr. HÖPPERGER (WIPO) noted that the Contracting Parties to the New Act would be members of the existing Lisbon Union. The New Act would only bind the new Contracting Parties. If the procedural rules for the New Act changed and members of the same union sat on the same assembly, two different sets of procedures would apply. The countries bound only by the New Act would have different procedural rules, different majorities, and different quorum rules. Consequently, the Assembly would have to operate with two different sets of rules.

178. He recalled that the Organization had experience with revisions and new acts in the registration unions, for example, within the Madrid Union, where two acts applied, and within the Hague Union, where at a certain point three acts applied in parallel. While the various revisions of those acts had introduced new substantive rules, the administrative rules had been

kept the same. Moreover, under the older treaties, institutional rules for assemblies and voting did not exist. They were introduced later on, creating several categories of Contracting Parties that could or could not vote on several types of issues. In order to avoid such a complicated situation, consideration might be given to avoiding changes that were not really necessary.

179. Mr. GAOUAOUI (Algeria) thanked the president of the Secretariat for the clarifications and the information provided, which were not available when it submitted its proposal. However, because the Delegation could not reach its capital city, it preferred to retain this proposal for the time being, but added that it would revisit this point.

180. The CHAIR, recalling that any proposal needed to be seconded by at least one Member State, postponed the discussion of the proposal on Article 22(3)(b). He then turned to Article 22(4)(b)(ii), inviting the Committee to decide on whether to maintain the words “*vice versa*” at the end of the paragraph. He recalled that the gist of the paragraph was that if one member of an intergovernmental organization voted in one specific case, the intergovernmental organization had no right to vote on the same occasion, or if the intergovernmental organization voted, then no Member State of the intergovernmental organization had a right to vote.

181. Mr. GAOUAOUI (Algeria) wished to know the Secretariat’s interpretation of Article 22(4)(b). The Delegation of Algeria added that the French version of the text was quite ambiguous with regard to the word “conversely” and suggested a better formulation according to the explanation provided, at least for the French version.

182. Mr. HÖPPERGER (WIPO) noted that the provision covered a relatively new situation in public international law, where an international organization became a member of a treaty. He added that WIPO had already had experience in this area, in particular with the Madrid Protocol and the Geneva Act of the Hague Agreement. This opportunity was about to be introduced in this New Act of the Lisbon Agreement. The problem concerned an intergovernmental organization’s right to vote. An international organization would have no right to vote in and of itself, although Member States agreed that it could become a Contracting Party of a treaty. It would vote in the interests of its members and with the number of votes of the members present. Therefore, for practical reasons, this provision was included to avoid an organization and its members voting together. It determined that if an intergovernmental organization voted, the members had no right to vote. However, if one of the members of the intergovernmental organization wished to vote, this member blocked the intergovernmental organization’s right to vote. In order to express these two possibilities in simple terms, the expression “*vice versa*” was introduced. It permitted the intergovernmental organization to avail of its right to vote, provided that its members did not vote, and vice versa.

183. To illustrate this idea, Mr. HÖPPERGER cited the case of the OAPI and its 17 Member States. If each of the 17 Member States of the OAPI, and the OAPI per se, were members of the Assembly and if the OAPI voted, it would vote in the interests of and with the votes of its 17 Member States. However, if one of these Member States wished to vote, the OAPI would have no right to vote. The other members of the OAPI would also be able to vote individually. Therefore, either only the intergovernmental organisation voted or each of the 17 Member States voted individually. In both cases, there would always be 17 voters. The

Secretariat pointed out that it was a procedural rule that helped to avoid having to settle any disputes between the organization and its Member States. The term “*vice versa*” was therefore used to explain the situation in simple terms”.

184. The CHAIR wished to make a suggestion for the text in French, subject to approval by the French Delegation and the Delegations of French-speaking countries. To harmonize the texts, the CHAIR therefore suggested replacing the last two words “and conversely” in the French text with the words “*and vice versa*”, which was a Latin expression also used in English and this would avoid an incorrect interpretation of the word “conversely”.

185. Mr. GAOUAOUI (Algeria) expressed his satisfaction with the Secretariat’s clear explanations, but emphasized that the French wording of this provision did not reflect the Secretariat’s explanations. He therefore suggested meeting the Secretariat at the end of the meeting, to make suggestions to improve the text.

186. The CHAIR informed the Committee that the Delegation of Algeria would meet with the Secretariat, with a view to improving the French language version of Article 22(4)(b)(ii).

187. Mr. KUMER (United Kingdom) said that the words “*vice versa*” were in fact redundant, as that situation would not occur at all.

188. The CHAIR said that the words “*vice versa*” were useful as a reference to the reverse situation compared to the one described in the provisions.

Article 25: Regulations

189. The CHAIR turned to Article 25(2)(a), recalling that the Delegation of Algeria had proposed to delete the words “by unanimity”. The provision would thus read: “The Regulations may specify that certain provisions of the Regulations may be amended only by a three-fourths majority”.

190. Mr. KWAKWA (WIPO), in reply to a question by the Delegation of Iran (Islamic Republic of) on whether there was any difference between “unanimity” and “consensus”, believed that the word “consensus” denoted more of a political decision-making process than the word “unanimity”. In other words, “unanimity” would generally be the expectation that all those involved agreed, whereas “consensus” would be no objection from any of those involved. He also brought to the attention of the Committee that the text was identical with the text of the Geneva Act of the Hague Agreement, the Singapore Treaty, the Patent Cooperation Treaty and the Patent Law Treaty.

191. Mr. GAOUAOUI (Algeria) had questions concerning whether provisions would be adopted with a three-fourths majority or unanimity. The Delegation stated that the problem arose where, during the various Assemblies, some of the delegations would like to apply a three-fourths majority and others unanimity. There was no transparency, no regularity, in the decision itself. These were changes to provisions in the regulations, which should be governed by specific rules. Leaving the decision to the Assembly might cause a stir, or possibly debates. The Secretariat’s explanation that this provision was the same as that used in another treaty was not adequate. The concern here was to try to determine how the text could be improved and better implemented.

192. Mr. KWAKWA (WIPO) explained that the current text gave the Assembly an option for the future, that is, at the time when the Assembly decided, it could determine whether the amendments must be adopted with unanimity or three-fourths majority. He pointed out that the proposal from the Delegation of Algeria would be that in future the Assembly could only decide to require three-fourths majority and never require unanimity in order to amend certain provisions.

193. The CHAIR expressed the view that the provision would give the Assembly the flexibility to decide whether the amendment of a particular provision of the Regulation would need to be approved with unanimity or with three-fourths majority.

194. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) believed that the text as it stood was stronger, meaning that in some cases unanimity would be required to adopt amendments. Therefore, he expressed his support for the text as it stood.

195. Mr. KUMER (United Kingdom) believed that the purpose of the provision was not to specify which rules needed specific qualified majorities for their amendments, but to provide for the option of having different qualified majorities, which would then be linked to specific provisions in the Regulations.

196. The CHAIR, in response to a question raised by the Delegation of Moldova, referred to the provision of Article 22(2)(a)(iii), reading: “The Assembly shall amend the Regulations” which meant that the Assembly had the powers to amend the Regulations, and to decide that certain regulations might be amended only by unanimity or only by a three-fourths majority.

197. Mr. MOLDOVAN (Republic of Moldova), following the explanation by the Chair, believed it was reasonable to replace the word “Regulations” in Article 25(2)(a) by “the Assembly”, since it was within the competence of the Assembly to amend the Regulations.

198. Mr. KWAKWA (WIPO), following the proposal made by the Delegation of the Republic of Moldova, said that Article 25(2)(a) might read: “The Assembly may specify that certain provisions of the Regulations may be amended...” He noted, however, that Article 22(2)(a)(iii) had already made reference to the fact that it was the Assembly of the Lisbon Union that amended the Regulations.

199. The CHAIR, noting that one delegation expressed its support for the text as it stood in the Basic Proposal, invited Delegations to comment on the proposals put forward by the Delegations of Algeria and the Republic of Moldova. In the absence of any such comments, the Chair concluded that the text would not be modified at that stage.

Article 26: Revision

Article 27: Amendment of Certain Articles by the Assembly

200. The CHAIR moved to Article 26(2) and Article 27(1)(a), underlining that both provisions contained a reference to Article 24. Recalling that some Delegations had asked time to consider the issue, he expressed his readiness to leave the discussion open.

201. The CHAIR noted that there were no comments and concluded that the discussion on these articles remained open.

Article 28: Becoming Party to This Act

202. The CHAIR turned to Article 28(1)(iii) and said that no change of views had taken place since the earlier discussion on this Article.

Article 29: Effective Date of Ratifications and Accessions

203. The CHAIR referred to the earlier discussion on Article 29(2) [*Entry into Force of This Act*] and drew the attention of the Committee to the proposal made by the Delegation of Algeria aiming at replacing “five” eligible parties with “ten”.

204. Mr. GAOUAOUI (Algeria), while recalling that his delegation had already explained why it had submitted this proposal, noted that the current tendency was to copy what was found in other agreements or acts and that Main Committee II was not prepared to make substantive changes. For this reason, the Delegation preferred to withdraw its proposal and retain the current paragraph to accommodate all delegations.

205. The CHAIR, thanking the Delegation of Algeria for the withdrawal of its proposal, noted that the Committee agreed on the text of Article 29(2), as originally proposed in the Basic Proposal.

206. Mr. KUMER (United Kingdom) sought clarification on the criteria of five eligible parties in relation to intergovernmental organizations. He wondered whether an intergovernmental organization would count as one, or as one plus the number of its Member States, or just the number of its Member States which were in the system.

207. Mr. KWAKWA (WIPO) answered that an intergovernmental organization would count as one, in the sense in which it counted as one in the World Trade Organization.

208. The CHAIR said that, in his understanding, in case instruments of ratifications or accessions had been received from four States and OAPI, these would count as five parties and not four plus 17, which was the number of Member States of OAPI. However, if these four States were joined by three members of OAPI, but not by OAPI itself, these would count as seven.

209. The CHAIR then turned to Article 29(4) [*International Registrations Effected Prior to Accession*]. He recalled that it had been suggested to replace the term “benefits” by the term “provisions”, inserting a reference to “geographical indications” in the third line after the phrase “in respect of appellations of origin” and deleting the word “however”. He added that the text contained two square brackets, one surrounding the reference to Article 7(5), and another surrounding the reference to Article 17, for which decisions by Main Committee I were pending.

210. Ms. KULIKOVA (Russian Federation) recalled that she had sought clarification on the notion of territory of an intergovernmental organization. The Delegate also drew the attention of the Committee to some inaccuracies in the Russian version of Article 29(4), as the reference to Article 7(5) in that version was a reference to Article 7(6).

211. Mr. KWAKWA (WIPO) confirmed that similar language was contained in several WIPO Treaties such as the Madrid Protocol, the Hague Agreement, the Washington Treaty on Intellectual Property in Respect of Integrated Circuits, which was not yet in force, and the Singapore Treaty. He mentioned, for example, that the Madrid Protocol provided that, where the Contracting Party was an intergovernmental organization, it referred to the territory in which the constituting treaty of that intergovernmental organization applied. The language in the Hague Agreement, the Washington Treaty and the Singapore Treaty was along those same lines. Consequently, “territory” would refer to the territories of the Member States of the intergovernmental organization.

Article 31: Application of the Lisbon Agreement and the 1967 Act

212. The CHAIR turned to Article 31(1) and recalled that it had been suggested to replace “States party” by “parties” so as to reflect the new situation according to which intergovernmental organizations could also become party to the New Act of the Lisbon Agreement.

213. Mr. KWAKWA (WIPO) drew the attention of the Committee to the fact that the proposal to replace the words “States party” by the word “parties” would be problematic because Article 31(1) dealt with the relations between States party to both this Act and the Lisbon Agreement or the 1967 Act. Consequently, replacing “States party” by “parties” would be inaccurate as intergovernmental organizations were not able to become parties to the previous versions of the Lisbon Agreement.

214. The CHAIR, taking into account the explanation by the Secretariat, suggested to the Committee to accept the text of Article 31(1), with the words “States party”, as it stood in the Basic Proposal. He noted that there were no comments and therefore concluded that the Committee agreed on Article 31(1).

215. The CHAIR observed that the Committee had discussed all the pending issues, some of which still needed the guidance of, or a decision by, Main Committee I.

216. Ms. CERENZA (Italy) reminded the Committee that her Delegation still had an issue regarding Article 31(1), to which it wished to add a safeguard clause. However, as her Delegation had not had the possibility to consult with its capital, she would prefer discussing that issue at the next meeting.

217. The CHAIR drew the attention of the Committee to the future proposal announced by the Delegation of Italy in relation to Article 31(1). He added that discussions on Article 29(4) were still open because of its reference to Article 7(5) and Article 17. He observed that, thanks to the cooperation of and readiness to go ahead from all Delegations, the Committee had reduced considerably the volume of pending issues. He believed that Main Committee II could revert to these issues after the next meeting of Main Committee I.

218. Mr. HÖPPERGER (WIPO) informed the Committee that the Steering Committee would meet on Monday morning before the Plenary meeting. The Steering Committee would decide which Committee would meet after the Plenary meeting.

219. The CHAIR announced that he would report to the Steering Committee that the Committee had completed the majority of its work. He would also include in his report the pending issues, including those awaiting information from Main Committee I.

220. The CHAIR adjourned the meeting.

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221. The CHAIR welcomed the participants and expressed the hope that the Committee would advance to a final document taking into account the deadline. He recalled that the previous Diplomatic Conference had taken place in 1967 and underscored that the next Diplomatic Conference would probably be held in 30 to 40 years. This meant that the decisions by the current Diplomatic Conference would set the framework for the functioning of the Lisbon System for the next 30 or 40 years. Therefore, he invited the Committee to look towards the future, and not to rely on the past. Secondly, he observed that the work of Main Committee II was well advanced and that the Committee had achieved good progress.

222. The Chair reminded the Committee that Article 22(2)(a)(ix), Article 22(3)(b), Article 24(2), Article 24(3)(a), Article 24(4), Article 24(5), Article 25(2)(a), Article 26(2), Article 27(1)(a), Article 29(4) and Article 31(1) were still pending.

Article 22: Assembly of the Special Union

223. The CHAIR referred to Article 22(2)(a)(ix), in which the reference to Article 24 still appeared in square brackets.

224. Mr. SCHMIDLIN (Italy) said that his Delegation preferred to keep the reference to Article 24 in the text of Article 22(2)(a)(ix). As he had previously outlined, the Assembly needed flexibility. He underscored that it would not be possible to convene a Diplomatic Conference, which would entail costs to be borne by the members, only to revise the financing issues. Consequently, it was in the interest of WIPO to retain this reference.

225. Mr. POLINER (Israel) expressed his Delegation's preference for the deletion of the reference to Article 24 as it would prefer dealing with financing through rules and flexibilities in other provisions.

226. Ms. COTTON (United States of America) expressed her support for the statement made by the Delegation of Israel. She recalled that her Delegation had requested the deletion of the

reference to Article 24 in Articles 22, 26, and 27, so as to ensure that the decisions taken during the Diplomatic Conference regarding the sources of financing were appropriate and of such an amount to fund the Lisbon System and make it self-sustainable, which it had not been in its history. In her Delegation's opinion, there was a need to depart from traditional formulations, where the Assembly could amend certain provisions of various treaties, because the Lisbon System was unlike other more successful registration systems which provided for an ongoing fee income to sustain them. Taking into account the limited number of geographical indications and appellations of origin, it was unlikely than the Lisbon System would never be financially sustainable on the basis of fees alone. The Delegate concluded by saying that she hoped that the various options discussed to provide for self-sustainability could stay in the treaty until the next Diplomatic Conference and could not be undone or revisited by those who could have an interest in the Lisbon System not being self-sustainable.

227. Ms. LAUMONIER (France) stated that for the sake of flexibility, as discussed by the Delegation of Italy to allow the Union to better manage its finances, and because the Member States were responsible when involved in an international treaty, the Delegation of France was in favor of maintaining the Assembly's option to modify Article 24, and therefore of retaining the reference to this provision in Article 22(2)(a)(ix).

228. Ms. KOPECKÁ (Czech Republic) said that her Delegation preferred keeping the reference to Article 24 in the text of item (ix), for the reasons explained by the Delegations of Italy and France.

229. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) said that his Delegation also preferred to retain Article 22(2)(a)(ix) as it stood, because of reasons mentioned by the Delegations of Italy and France, and also because of its importance for the Assembly of the Special Union.

230. Ms. MOORE (Australia) supported the proposal aimed at deleting the reference to Article 24 as put forward by the Delegations of Israel and the United States of America. She underlined the importance of having mechanisms in place for appropriately ensuring that the finances of the Lisbon System were maintained in a sustainable way.

231. The Delegation of Tunisia also supported retaining point ix) of Article 22.2)a).

232. Mr. SCHMIDLIN (Italy) strongly believed that keeping the reference to Article 24 in Article 22 was in the interest of the sustainability of the Union.

233. Mr. RAMALHEIRA (Portugal) expressed his flexibility on the issue. As mentioned by the Delegation of Italy, allowing the Lisbon Union Assembly to adopt amendments to adapt the provisions dealing with the financing of the Lisbon System would also apply in case the Assembly would have to deal with a deficit in the future. In other words, the provision of Article 22(2)(a)(ix) would provide flexibility in both ways.

234. Ms. PEROVIĆ (Montenegro) aligned herself with the statements made by the Delegations of Italy, France and Portugal.

235. The CHAIR observed that only one Delegation was against retaining the reference to Article 24 in the text, and that all other Member Delegations had supported it. Therefore, he

suggested that the Committee adopt the text as it stood in the Basic Proposal, i.e. with the reference to Article 24. He noted that there was no objection.

236. Ms. COTTON (United States of America) reiterated that her Delegation did not support the retention of the reference to Article 24 in Article 22(2)(a)(ix).

237. The CHAIR said that the Committee had agreed to retain Article 22(2)(a)(ix) as it stood in the Basic Proposal.

238. The CHAIR turned to Article 22(3)(b) and wondered whether the Committee wished to keep the text as it was in the Basic Proposal or to modify it according to the proposal made by the Delegation of Algeria. He noted that there were no comments and concluded that the Committee agreed to keep the text of Article 22(3)(b) as it was originally proposed in the Basic Proposal.

Article 25: Regulations

239. The CHAIR referred to opened Article 25(2)(a) and drew the attention of the Committee to the proposal made by the Delegation of the Republic of Moldova, to replace “The Regulations may specify” by “The Assembly of the Special Union shall decide”.

240. Mr. MOLDOVAN (Republic of Moldova) recalled that the proposal to replace the words “The Regulations may specify” by the words “The Assembly of the Special Union shall decide” aimed to bring more clarity to the text of Article 25(2)(a).

241. Mr. KLINKA (Slovakia), endorsing the proposal made by the Delegation of the Republic of Moldova, believed it would clarify the Delegation of competence to the Assembly.

242. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) also supported the proposal put forward by the Delegation of the Republic of Moldova.

243. Ms. HERNÁNDEZ NARVÁEZ (Mexico) supported the amendment proposed by the Delegation of the Republic of Moldova.

244. Ms. LAUMONIER (France) stated that, for more clarity of Article 25(2), the Delegation of France also endorsed the amendment proposal presented by the Delegation of the Republic of Moldova.

245. Ms. VIEIRA LOPES (Portugal) expressed her support for the proposal put forward by the Delegation of the Republic of Moldova.

246. Ms. VIGNJEVIĆ (Bosnia and Herzegovina) also expressed her support for the proposal made by the Delegation of the Republic of Moldova.

247. Mr. KUMER (United Kingdom) expressed the view that replacing the word “Regulations” by “the Assembly” would add some clarity. Referring to Article 22(4)(b)(ii), he requested clarification about the status of the discussion on that provision which, in his understanding, had not been clarified or agreed.

248. Ms. MORAU (Romania) stated that her delegation supported the proposal made by the Delegation of the Republic of Moldova.

249. Mr. CURCHOD (CEIPI) noted that the proposal made by the Delegation of the Republic of Moldova contained two aspects. Before expanding on these, the Representative of CEIPI wished to recall that currently the draft implementing regulations of the Lisbon Agreement did not provide for certain rules as subject to specific regulations for their modification. Provided that the Diplomatic Conference maintained this approach in the final adoption of the implementing regulations, there would be future changes and these would essentially be made by the Assembly. Consequently, the CEIPI representative considered that replacing the implementing regulations by the Assembly was a clarification that did not change anything substantive. However, the second aspect of this proposal changed the overall meaning, given that where the text of the basic proposal said that certain provisions could be modified by certain rules for adopting decisions, the proposal of the Republic of Moldova required the Assembly to identify those rules. As a result, if the provision were to be clarified while maintaining the meaning, it should be pointed out that the Assembly of the Special Union “could decide” and not “decides”.

250. Mr. MOLDOVAN (Republic of Moldova) expressed his appreciation for the comment made by the Representative of CEIPI. He stressed that the intention was to give to Article 25(2) the same spirit as Article 22(2), pointing out that, as regards the competences of the Assembly of the Special Union, Article 22(2)(a) contained the words “the Assembly shall”. He further underscored that Article 25(2) provided that certain provisions of the Regulations “may be amended”. In reply to a question by the Chair on whether the proposal could be modified so as to provide that “the Assembly of the Special Union may decide”, he wished to know the opinion of the Secretariat.

251. Mr. KWAKWA (WIPO) wished to support the suggestion made by the Representative of CEIPI. As formulated by the Delegation of the Republic of Moldova, it would be obligatory for the Assembly to take a decision and to specify which of the provisions could be amended by unanimity or by a three-fourths majority. If the word “may” was used, it would be up to the Assembly to take that decision. In his opinion, this would still be consistent with Article 22.

252. Mr. MOLDOVAN (Republic of Moldova) expressed his flexibility and agreed to replace the word “shall” by the word “may”.

253. The CHAIR concluded that the text of Article 25(2)(a) would then read: “The Assembly may decide”.

Article 22: Assembly of the Special Union

254. The CHAIR turned to Article 22(4)(b)(ii) and reverted to the question raised by the Delegation of the United Kingdom on the term “*vice versa*”. He said that the decision taken by the Committee was to align the French version with the English version, so as to avoid any uncertainty concerning the interpretation of the French version. This did not imply a change in the English version, but only in the French version was concerned.

255. Mr. KUMER (United Kingdom) recalled that the need of keeping the term “*vice versa*” in the paragraph had been discussed. His Delegation was of the view that the term should be deleted altogether, as the “*vice versa*” situation would not occur.

256. The CHAIR recalled that most of the Delegations which had previously made statements on that issue were in favor of keeping the term “*vice versa*”, for reasons of clarity.

257. Mr. MOLDOVAN (Republic of Moldova) endorsed the position expressed by the Delegation of the United Kingdom. He observed that Article 22(4)(b)(ii) had two parts. The first part described the voting procedure in case of a Contracting Party that was an intergovernmental organization. The second part concerned how the intergovernmental organization should act when the vote was requested by its member States. He considered that, as pointed out by the Delegation of the United Kingdom, the phrase “and *vice versa*” was redundant.

258. Mr. GAOUAOU (Algeria) recalled that his delegation had already expressed its unease with regard to the use of the word “conversely” placed after a semi-colon. The issue that arose was whether this word “conversely” applied to the whole paragraph or only to the sentence that started with “no intergovernmental organization has the right to vote if any of the Member States cast a vote”. The Delegation considered that if this word specifically applied to the second part of the sentence, it made no sense. This meant that no Member State could vote if the intergovernmental organization voted. However, if this same term applied to the whole paragraph, it changed the meaning completely. This meant that any Member State could vote in place of the intergovernmental organization. That is why the Delegation suggested removing the words “and conversely”. Whether it was “conversely” or “*vice versa*”, the meaning remained the same. To maintain the meaning of the word “conversely”, the Delegation suggested adding a paragraph to explain what was meant by “conversely”.

259. Mr. KWAKWA (WIPO) believed that the term “*vice versa*” referred to the last part of the phrase quoted by the Delegation of Algeria, .i.e. but not to the whole phrase. This term aimed at reinforcing the fact that, if an intergovernmental organization voted, its Member States could not vote, and if any of those Member States voted, then the intergovernmental organization could not vote. He added that the language was consistent with the language of all other WIPO treaties to which an intergovernmental organization could become party.

260. Ms. FOUKS (France) specified that as a member of an intergovernmental organization, the Delegation of France had considered this provision carefully. The Delegation admitted that in the beginning, some of its members had expressed some doubts concerning the procedures for the implementation of this provision. It underlined that it was necessary to separate the two parts of the text. The first part had only one goal and that was to point out that the intergovernmental organization could not have more votes than those of its members who participated. The second part of the text related to “housekeeping matters” given that it addressed the issue of how the intergovernmental organization and its Member States agreed to vote. Whether it was the intergovernmental organization or its members who could vote depended on the relationship between them and could not be dealt with by WIPO. To resolve this issue, the Delegation suggested inserting a full stop rather than a semi-colon between the two parts of the sentence, which were unconnected. She suggested referring this linguistic question to the Drafting Committee. She concluded by pointing out that France, which was a member of an intergovernmental organization that could become a Contracting Party to this agreement, had no major issue with this provision.

261. Mr. GAOUAOUI (Algeria) endorsed the proposal made by the Delegation of France.

262. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) expressed his support for the proposal made by the Delegation of France.

263. Mr. KUMER (United Kingdom), expressing the flexibility of his Delegation, said that that proposal would add some clarity to the text.

264. Mr. FICSOR (Hungary) supported the amendment proposed by the Delegation of France and seconded by the Delegation of Algeria, and considered it an appropriate solution to the issue. He further pointed out that the most recent WIPO treaty, namely the Marrakesh Treaty, contained the same language, with a full stop and without the term “but”.

265. The CHAIR noted the agreement of the Committee and considered the discussion on Article 22(4)(b)(ii) closed.

Article 26: Revision

266. The CHAIR, turning to Article 26(2), recalled the proposal to delete the reference to Article 24. He stated that, if there were no objections, he would assume that the Member Delegations would apply the same approach as for Article 22(2)(a)(ix) and, consequently, keep that reference.

267. He noted that no objection was raised and concluded that the Committee agreed to maintain the reference to Article 24 in Article 26(2).

268. Ms. COTTON (United States of America) indicated that her Delegation expressed its reservation to the inclusion of the reference to Article 24 in Article 26(2).

Article 27: Amendment of Certain Articles by the Assembly

269. The CHAIR turned to Article 27(1)(a) which raised a similar issue concerning the reference to Article 24. He assumed that the Member Delegations would apply the same approach as for Article 22(2)(a)(ix) and Article 26(2).

270. He noted that there were no objections and concluded that the Committee agreed to maintain the reference to Article 24 in Article 27(1)(a).

271. Ms. PERLMUTTER (United States of America) said that her Delegation was confused about the nature of the process followed in the Conference. She pointed out that, normally, at WIPO diplomatic conferences, the goal and the working methods had been to achieve consensus on each provision, and, where there was no agreement, the Delegations had always worked hard to find acceptable compromises. In the rare situations where, after intensive efforts, compromises were not possible, a vote was called. In contrast, in the current Conference, she observed that the Committee seemed to adopt texts where there was no consensus, without an effort to find compromise solutions, based on an apparent majority, but without a vote. Apart from the question of what the rules do or do not permit, she wished to

clarify whether that would be the working method for the rest of the Diplomatic Conference, which was a change from the way diplomatic conference negotiations had normally proceeded.

272. The CHAIR said that, in his understanding, a proposal by an Observer Delegation needed to be seconded at least by two Member Delegations. A proposal made by one Member Delegations needed to be seconded by a second Member Delegations. He then observed that there was only one Member Delegations which opposed the inclusion of the reference to Article 24. Therefore, he considered that the Committee had complied with the practice.

273. Mr. KWAKWA (WIPO) recalled that Articles 22, 26 and 27, which all referred to Article 24, had been examined since the beginning of the discussions in Main Committee II. He reminded that the Chair had suggested giving enough time to the Committee to consider those provisions in order to take a decision. He observed that, while the Delegation of the United States of America had expressed its favor for the deletion of the reference to Article 24, most of the Lisbon members were in favor of keeping that reference. On that basis, the Chair had decided that a decision could be taken.

Article 29: Effective Date of Ratifications and Accessions

274. The CHAIR opened the discussion on Article 29(4). He noted that the proposal to add the term “geographical indications” after “in respect of appellations of origin” had been accepted by most of the Member States. He then said that the Committee still wished to keep Article 7(5) in square brackets as it waited for a decision on that provision in Main Committee I. Pending proposals consisted of deleting the word “however”, adding the word “also” in the sentence “the acceding State or intergovernmental organization may also specify” and putting in square brackets the reference to Article 7(5) and Article 17, as these were pending a decision of Main Committee I.

275. Mr. FICSOR (Hungary) was of the view that the issue of the reference to Article 24 depended on the outcome of the discussions on that provision. While it would prefer keeping this reference in the text so as to leave enough discretion to the Assembly of the Lisbon Union to permit the system to be financially sustainable, his Delegation was prepared to still consider this reference as a pending issue, taking into account its connection with the outcome of the discussions on Article 24.

276. Mr. FICSOR (Hungary) further said that the discussions in Main Committee I would result in an Article 7(5), although the content was not yet entirely clear. However, the principle enshrined in Article 7(5) was generally accepted. Consequently, his Delegation suggested removing the square brackets surrounding the reference to Article 7(5).

277. M. POLINER (Israel) supported both suggestions made by the Delegation of Hungary.

278. Ms. KULIKOVA (Russian Federation), referring to the notion of territory of the intergovernmental organization, expressed her preference for the wording already contained in previous WIPO treaties, i.e., “the territory in which the constituting treaty of that intergovernmental organization applied”. On the reference to Article 7(5), she agreed to remove the square brackets since, as pointed out by other Delegations, Article 7(5) on individual fees would be kept in the text of the treaty.

279. The CHAIR noted that no objections were made and therefore considered that the Committee agreed with the proposal made by the Delegation of Hungary, seconded by the Delegation of Israel, to remove the square brackets surrounding the reference to Article 7(5).

280. Mr. KWAKWA (WIPO) confirmed that the Secretariat would ensure that the language concerning the territory of intergovernmental organizations was consistent with the language contained in previous WIPO treaties. The Secretariat would reformulate the sentence and bring it back to Main Committee II, for its consideration, when the Basic Proposal would be consolidated.

281. Mr. CURCHOD (CEIPI), referring to the first sentence of Article 29(4), pointed out that replacing the term “benefits” by the term “provisions” was appropriate. In his view, the second sentence was an exception to the application of this Act in the case considered under paragraph (4). Therefore, he believed that the term “however” was proper to express the idea that an exception to the application of the Act was allowed in connection with the time limit referred to in Article 15(1).

282. The CHAIR, reminding that the Delegation of the United States of America had made proposals on the term “however” and the term “may”, recalled that Member Delegations had previously considered that taking away “however” and adding “also” would make the text clearer. He believed that, if it did not change completely the sense of the text, it should be left to the Drafting Committee to find the best presentation of the text in that second part of Article 29(4).

283. The CHAIR noted that there were no comments or objections and requested the Secretariat to consider improving the text or going back to the Basic Proposal with a justified explanation, in its preparation of the consolidated text.

Article 31: Application of the Lisbon Agreement and the 1967 Act

284. The CHAIR noted that the Committee was still awaiting a proposal from the Delegation of Italy.

Article 24: Finances

285. The CHAIR opened the discussion on Article 24(2) [*Sources of Financing of the Budget*].

286. Mr. POLINER (Israel) said that the issue of Article 24 was interrelated with the issue of maintenance fees. He observed that the discussion was about the running costs of the Lisbon

System. He stressed that the costs would be borne by the government or by users, or by the Organization, which meant essentially by governments. He said that the issue was about cost allocation between users and governments. He recalled that, previously, the discussion was about a maintenance fee based on a *pro rata* basis or the payment by users of fees every ten years like with trademark applications, as a source of sustainable income to the system over a long period of time. If the system did not have a maintenance fee, there would be a subsidy system from those countries using the system less to those countries using the system more. This could not be a significant fee, but it would then transfer into an allocation of costs from users to nonusers.

287. The Delegate, referring to the statement of the Delegation of the European Union on the need for small producers to have access to the system and the statement of the Delegation of Italy concerning the need for the system to be attractive and not over-burdensome to users, observed that the full extent of the cost in financing the system was not known. Those were legitimate concerns. In order to make the system more attractive to small users, he suggested that subsidies to small users came from governments or countries promoting small users might subsidize them, either by direct support of their local industries and/or a two-tiered system for payment of maintenance fees, for amounts equivalent to those applicable in respect of small and medium sized enterprises. While balancing these legitimate issues, he stated that his Delegation believed that a maintenance fee that would be paid to the Lisbon System would help the sustainability and attractiveness of the system and would make it more amenable to a greater variety of States.

288. Mr. MARTIN (France), referring to the opinions the Delegation of France had expressed in previous discussions, recalled that he was aware of the importance of the stability of the financial balance of the Lisbon System. With a view to removing maintenance fees, which the Delegation did not favor, he noted that other avenues could be explored. In his view, the concept of maintenance fees was at odds with geographical indications, which were filed only once. Territory or traditions which were established once and for all, could not be altered. Different possibilities had been considered in Paris, such as increasing registration fees, Member States' contributions and the introduction of a working capital fund. These possibilities needed to be considered further, the Delegation having undertaken to find expeditious solutions. He further noted that there was a source of funding, which had not been discussed: income that would be generated by the conversion fee, that is, through the transfer of the appellations of origin from the current system to the new revised system. A certain amount per appellation would be paid to the WIPO Secretariat, thereby providing a major source of funding. The Delegation concluded by recalling that, in its view, the renewal fee was not practical.

289. Mr. BATANGA (OAPI) believed it necessary to harmonise Article 24 with the decision taken concerning Article 7(3) and the last paragraph of Article 8, where the Main Committee chose to abandon the maintenance fees in force. In the same vein, the Delegation of the OAPI advocated the deletion of the reference to maintenance fees in force in Article 24.

290. Mr. GONDA (Hungary) fully aligned himself with the statement made by the Delegation of France and indicated that his Delegation was ready to consider any available means to create financial balance in the Lisbon System, except the introduction of maintenance fees, for the reasons explained by the Delegation of France.

291. Mr. ESFAHANI NEJAD (Iran, Islamic Republic of) pointed out that, as recalled by the Delegation of France, the nature of appellations of origin and geographical indications was completely different from trademarks. Therefore, he believed that the Committee should think about compensating the expenses and the resources for the Lisbon System, but not with a maintenance fee, which should be deleted from Article 24.

292. Ms. HERNÁNDEZ NARVÁEZ (Mexico) stated that the Delegation of Mexico was keenly aware of the need to strengthen the sustainability and predictability of the Lisbon System and therefore supported some of the proposals that were now in Article 24. With regard to subparagraph 2(ii), she noted that the Delegation could not agree with the idea of maintenance fees. She concluded by emphasizing that the Delegation was fully prepared to consider the other options to ensure the sustainability of the system.

293. Mr. MOLDOVAN (Republic of Moldova) expressed the preference of his Delegation for maintaining square brackets in Article 24(2)(ii).

294. Mr. SCHMIDLIN (Italy) confirmed his Delegation's interest in making the Lisbon System more sustainable. However, this required careful consideration as it should be measured with the attractiveness of the Lisbon System for both States and businesses. In this spirit, his Delegation had requested to retain some flexibility by allowing the Assembly to modify Article 24. He underlined that a maintenance fee had philosophical problems and that members of the Lisbon System had to assess its impact on the attractiveness of the treaty. He considered that, even if maintenance fees were introduced, they would be operational only after the treaty had entered into force. At that stage, many producers would have to comply with the New Act and would maybe need to modify their registrations or to submit them again. This would generate modification fees which would be a source for the Lisbon Union. The Delegate informed the Committee that his Delegation was open to discussion on how to make the system sustainable and attractive, without concentrating on a specific measure that would be difficult to except for his Delegation, in view of its incompatibility with its country's domestic system.

295. Mr. VIEIRA LOPES (Portugal) considered that the financing and the sustainability of the system was absolutely essential for the Lisbon Union to work. In that context, she expressed readiness to find solutions to that problem. Sustainability should not be maintained by elements that would be adverse to the system and might lead to reduced sustainability. Therefore, her Delegation preferred to delete the reference to maintenance fees in Article 24.

296. Mr. HALL ALLEN (European Union), referring to the statements made by the Delegations of France and Italy, noted that the system would have a revenue stream, namely the transition fees, which had not yet been widely discussed. He therefore requested more information on the nature of those fees and their impact.

297. Ms. KOPECKÁ (Czech Republic) stated that her Delegation aligned itself with the statements made by the Delegations of France, Italy and Hungary and wished that the mention of maintenance fees be deleted from Article 24.

298. Ms. SAGBO (Togo) supported the proposal of the OAPI for the deletion of the maintenance fees in force.

299. Ms. COTTON (United States of America), referring to Article 24(2)(i), wondered whether a reference needed to be made to fees collected under the original Act and the 1967 Act, as that concerned the Special Union which included the previous Acts. As the latter would remain in force and fees could continue to be collected, she underlined the need to have reference to those. She stressed that the funding for the Special Union, with three different acts, was complicated and nuanced. She was in favor of keeping the square brackets in the text of item (ii) regarding maintenance fees. While she appreciated the interventions referring to a desire to be flexible and to look at other ways to fund the system, she had not heard many proposals and would like to see a combination of elements in the text allowing for the Lisbon System's sustainability. Having heard other Delegations, it was clear that there were still questions to be answered, so that further discussions were necessary. Finally, her Delegation agreed with the Delegation of Israel, as its comments were useful and pertinent.

300. Ms. KIRIY (Russian Federation) reiterated that the beneficiaries of the Lisbon Union should make a contribution to the maintenance of the system and its financing. It was quite logical to keep in the text the possibility of having maintenance fees. However, an effort should be made to find other sources of financing, as mentioned by some Delegations. She observed that one of the alternative sources were contributions by States, which was also contained in the provision. She pointed out that, if the producers did not have enough funds, their government could provide support, for example by paying the maintenance fees. That would be a contribution by the Member States to the maintenance of the Lisbon System.

301. Ms. MORARU (Romania) supported the position expressed by the Delegations of France and Hungary. She stated that since Romania was not in favor of the maintenance fees in force, her suggestion was to delete them.

302. The CHAIR adjourned the meeting.

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303. The CHAIR recalled that pending issues in the Basic Proposal concerned Articles 7 and 8 as well as Rule 8 relating to fees. In the administrative provisions, outstanding issues also concerned Article 22(2)(a)(ix), Article 26(2) and Article 27(1)(a) which all referred in square brackets to Article 24. Pending issues also concerned Article 24(2), Article 24(3), Article 24(5), Article 29(4) and Article 31.

304. He announced the distribution of a Chair's Non-Paper compiling all proposals on the outstanding provisions.

Article 22: Assembly of the Special Union

Article 26: Revision

Article 27: Amendment of Certain Articles by the Assembly

305. The CHAIR turned to Articles 22, 26 and 27. He recalled that a majority of Lisbon Member States wished to keep the reference to Article 24 so as to leave more flexibility to the Assembly to decide on possible practical and operational issues.

306. Mr. POLINER (Israel), invoking the spirit of flexibility, agreed with maintaining the reference to Article 24, particularly if any amendments to Article 24 would be taken by unanimous decision of the Assembly.

307. Ms. HERNÁNDEZ NARVÁEZ (Mexico) wished to retain the reference to Article 24 in Articles 22(2), 26(2) and 27(1)(a), and expressed appreciation to the Delegation of Israel for its flexibility. The Delegation nonetheless added that, it would make a statement only when talks on Article 24 and the proposal by the Delegation of Israel began.

308. Ms. COTTON (United States of America) appreciated the statement made by the Delegation of Israel. In light of the discussion on seeking sustainable funding options, she supported the idea of requiring unanimity to amend Article 24. She expressed the interest in seeking a commitment from the Diplomatic Conference to finding sustainable funding sources and listing them specifically in Article 24(2). Her final decision on whether to maintain the reference to Article 24, however, would depend in part on the agreement on the text of Article 24. For that reason, the square brackets should be maintained around Article 24 until the conclusion on the discussion on Article 24 as a whole was taken.

309. Mr. GAOUAOU (Algeria) was in favor of maintaining the reference to Article 24 for the three provisions concerned.

310. The CHAIR concluded that the Committee agreed in principle to keeping a reference to Article 24 in Articles 22(2)(a)(ix), Article 26(2) and Article 27(1). He announced that this would be confirmed following the discussions on Article 24.

Article 24: Finances

311. The CHAIR said that, as regard Article 24(3), the Chair's Non-Paper reflected several proposals, including one put forward by the Delegations of Italy and the Republic of Moldova.

312. Mr. SCHMIDLIN (Italy) pointed out that the proposal made by his Delegation and the Delegation of the Republic of Moldova intended to give flexibility to the Assembly in case of a financial gap. The term "alternative source" aimed at encompassing several possibilities, such as a fee or an increase of the existing fees. Both would mean that a part of the gap would be compensated with some contributions, leaving the rest to be charged in terms of fees. The Delegate underlined that the proposal would even allow Member States to decide how to contribute, either with public funds or with charges for producers. In his Delegation's view, the proposed provision would enable the Assembly to identify a mechanism for solving financial gaps. He added that the proposal did not stick only to contributions and gave the Assembly the possibility to find the optimal solution in the interest of sustainability and attractiveness of the Lisbon System.

313. Mr. MOLDOVAN (Republic of Moldova) underlined that the proposal aimed at making available all options for the Assembly, as the system should be working for the next half of a century.

314. Mr. GAOUAOUI (Algeria) underlined that the main rationale for the text was to attempt to define the nature of the contribution itself. The Delegation of Algeria was not opposed to the Assembly's examination of the issue of finance to find new mechanisms in the event of a deficit and it was prepared to discuss it to find a suitable mechanism. Nevertheless, while underlining that the main objective was to make the treaty attractive to new countries, including developing countries, the Delegation was concerned that the term "special", which did not define the nature of the contributions, might make these countries apprehensive of acceding to the treaty, considering that they could be requested to pay new contributions if the Assembly so decided. Insofar as the Organization was not in deficit and had adopted a special budget, distributing financial resources across the unions, the Delegation concluded by specifying that it maintained its position to ensure that contributions from Contracting Parties were voluntary.

315. The CHAIR recalled that the kind of contributions would be decided by the Assembly, if necessary, to obtain additional funds to enable the system to continue working and to become sustainable. That did not mean that those contributions were contributions in the classical sense, that Member States party to the treaty would be obliged to pay every year regardless of what happened. For that reason, he had proposed the word "special" in Article 24(2). He noted, however, that the proposal put forward by the Delegations of Italy and the Republic of Moldova did not contain the word "special".

316. He further observed that, in case of deficit, Member States would have to pay, so that a voluntary contribution could not be expected. The Chair added that the Assembly would deal with that when the treaty would be in force. At that time, the Assembly would also deal with the implementation modalities of the fees or of the different other income sources outlined in the paragraph. He wished to assure the Committee that that was not a hidden introduction of contributions, but rather a flexibility for future Assembly decisions, whenever necessary, asking Member States to provide additional funds in case of a deficit. The Chair, underlining the exceptional character of the situation, stated that the type of contributions mentioned in subparagraph (vi) could not be voluntary, but would be mandatory for the Member States adhering to the new treaty.

317. Ms. COTTON (United States of America), referring to the proposal made by the Delegations of Italy and the Republic of Moldova, expressed concern on the reference to "any alternative source". She indicated that her Delegation had found out that the sources of income for the Lisbon Union were not limited to the sources of income specifically identified in Article 24(2) of the Basic Proposal and in the corresponding provision in the current Act of the Lisbon Agreement. There was another source of income - unknown to her Delegation - that had been used to fund the system. She considered that a reference to an alternative source could identify that source that her Delegation wished to see minimized. Consequently, a clarification about the alternative source would be necessary to support the proposal of the Delegations of Italy and the Republic of Moldova. For that purpose, she suggested adding the terms "derived from Lisbon Union members or its beneficiaries or both" after the terms "any alternative source". She added that her Delegation would support the inclusion of the word "special" if it could be a helpful clarification.

318. Mr. KUMER (United Kingdom) sought more details in relation to the alternative source. Although it could accept the proposal made by the Delegation of the United States of America, his Delegation proposed that the provision refer to “contributions or any alternative source from the Contracting Parties”.

319. Mr. SCHMIDLIN (Italy) requested the Delegation of the United States of America to give examples so as to clarify the meaning of the wording “source derived from Lisbon Union members”. Considering that this was covered by contribution, he wondered what would be the difference and whether beneficiaries meant a fee. Besides, in order to alleviate the concern expressed by the Delegation of Algeria, his Delegation suggested adding an agreed statement such as: “it is understood that the nature of the contribution would be decided by the Assembly of the Special Union”. It would clarify that contribution would be used in a determined way.

320. Ms. FOUKS (France) believed that the issue of funding for the Lisbon Agreement should be dealt with in relation to its geographical scope, which should be extended to new Member States. She noted that efforts were currently being made to improve funding, including by allowing for an increase in registration fees and by the introduction of special contributions which, as noted by the Secretariat, would be exceptional and particular to the Lisbon Union. In that respect, the Delegation remained in favor of the text proposed in the CHAIR’S Non-Paper.

321. Mr. ROSSI COVARRUBIAS (Peru) stated that the proposals by the CHAIR and the Delegations of Italy and the Republic of Moldova appeared to be heading in the same direction. In both proposals, it seemed clear that the Assembly of the Union would decide on an alternative to cover the existing deficit. The Delegation of Peru stated that it had a suggestion concerning the proposal of the Delegations of Italy and the Republic of Moldova. It specifically suggested reversing the first part of the English sentence where it says “*contributions from the Contracting Parties or any alternative source, or both*”. In other words, the Delegation suggested that it go from the general to the particular stating, “*any alternative source, including contributions from the contracting parties, if and to the extent to which receipts...*” It was a suggestion, but it was the Delegation’s view that out of this range of possibilities, contributions should be an option. In any event, it believed that a more general meaning needed to be conveyed in Article 24(2)(vi) before a settlement could be reached on the subject.

322. Mr. FUSHIMI (Japan) understood that, under the current system, the deficit was filled by funding from the regular budget, including the revenue from the PCT and the Madrid System. As he did not feel comfortable with the continuation of such practice, he expressed the view that the reference to “any alternative source”, as proposed by the Delegations of Italy and the Republic of Moldova, could allow the continuation of the current practice. Therefore, in case of introduction of a reference to “any alternative source”, his Delegation would need the guarantee that that practice would not continue under the New Act. From that perspective, he thought that the language proposed by the Delegations of the United States of America or the United Kingdom could constitute a safe way for avoiding the continuation of that practice.

323. Ms. VIEIRA LOPES (Portugal) supported the proposal put forward by the Delegations of Italy and the Republic of Moldova, because it brought the necessary flexibility for special contributions. She also agreed with the statement made by the Delegation of Peru.

324. Ms. COTTON (United States of America) reiterated her concerns as regards the alternative source, namely PCT and Madrid systems fees. Although those fees, as a source of financing for the Lisbon System, were not listed in Article 24(2), her Delegation shared the concerns raised by the Delegation of Japan on the continuation of that practice. She added that her Delegation seconded the proposal made by the Delegation of the United Kingdom but would still retain the term “derived”, so that the proposal would read: “any alternative source derived from the Contracting Parties”. Finally, the Delegate had no preference on the order of the sentence, as long as the phrase “derived from the Contracting Parties” was retained.

325. Mr. VANERIO (Uruguay) echoed the statement of the Delegation of Japan with regard to the proposal and the proposed wording by the Delegation of the United States. The Delegation stated that it clearly understood the observation of some members that some flexibility was needed, but that it was also understandable and should be understood that those countries that were not members of Lisbon required certain guarantees so as not to follow the practice of recent years concerning Lisbon’s deficit and that this did not entail a burden for the rest of the Organization.

326. Mr. KIM (Republic of Korea), expressing his concerns about the sustainability of the Lisbon System, supported the proposal made by the Delegation of the United States of America and the statements made by the Delegations of Japan and Uruguay.

327. Mr. SCHMIDLIN (Italy), referring to the proposal made by the Delegation of Peru, explained that the purpose of the proposal was to have either contributions or an alternative source of funding. An alternative was meant to be applied to contributions. He then pointed out that if the text was narrowed to sources derived from Contracting Parties of the New Act, any fee measure would be excluded. He further said that, in the concept of alternative sources of funding, his Delegation wished to encapsulate the possibility of increasing the fees collected under Article 7(1) and (2).

328. Mr. MOLDOVAN (Republic of Moldova), considering that putting any alternative source before the contributions would change the meaning of item (vi), shared the concerns expressed by the Delegation of Italy on the increase in fees.

329. Ms. KULIKOVA (Russian Federation) sought further clarification on the words “alternative source”.

330. Mr. FICSOR (Hungary) underlined that “any alternative source” was not intended to refer to revenues generated under other global intellectual property systems in WIPO, but aimed at providing the necessary flexibility in terms of fees that could be collected under the Lisbon System. Therefore, he wondered whether item (vi) could be limited to income derived from Contracting Parties and whether, in item (i), a more flexible wording could be found to reflect the idea that the Assembly may decide to modify the fee structure of the system. The Delegate proposed referring, in item (vi), to “contributions of the Contracting Parties or any alternative source derived from them or both”. He also suggested introducing, in item (i), a more general wording such as “fees collected in respect of international registrations”.

331. The CHAIR observed that, on one side, the general principle to have special contributions from Contracting Parties was acceptable to Delegations and that the Assembly could also seek alternative sources of funding. The question was to ensure that those alternative sources did not use the WIPO budget. The Chair recalled that, on the one hand, the Delegation of the United States of America had proposed to use the terms “derived from Contracting Parties or beneficiaries” and that, on the other hand, the Delegation of Hungary had suggested limiting item (vi) only to “Contracting Parties” and modifying item (i) in order to refer to international registrations.

332. Mr. MOLDOVAN (Republic of Moldova) stated that, in the spirit of flexibility, his Delegation could consider the suggestion made by the Delegation of France to keep the word “special”. However, his Delegation would prefer to revert to that issue at a later stage.

333. Mr. SCHMIDLIN (Italy) declared that his Delegation needed time to reflect.

334. The CHAIR adjourned the meeting.

Fifth Meeting Tuesday, May 19, 2015 Afternoon

Article 24: Finances

335. The CHAIR invited comments on Article 24(2)(i) and (vi) as contained in a Non-Paper No. 2 that he had circulated, reflecting the two proposed texts on Article 24(2)(vi). The first text related to the proposal made by the Delegations of Italy and the Republic of Moldova, including the terms proposed by the Delegation of the United States of America. The second text concerned the proposal made by the Delegation of Hungary in respect of Article 24(2)(i) and (vi).

336. Mr. POLINER (Israel) was of the view that the second option would provide greater flexibility for the future.

337. Mr. KUMER (United Kingdom) sought clarification regarding the proposal made by the Delegation of Hungary, in particular, regarding fees collected in respect of international registrations. He believed that, although Article 1(ix) defined the term “international registration”, it would be preferable to clearly specify that those fees concerned international registrations under the Lisbon System.

338. Mr. FICSOR (Hungary) was of the view that, if a term was defined in the abbreviated expressions and used consistently throughout the agreement, it would not be necessary to re-define it in any other provision. In his opinion, it was clear that a reference to “international registrations” in the New Act referred to international registrations under the New Act of the Lisbon Agreement, as defined in Article 1.

339. The CHAIR also believed that, if a definition of a certain term was provided at the beginning of an international treaty, the same term could be used throughout the treaty without any additional clarification.

340. Mr. SCHMIDLIN (Italy) highlighted the difference between the two proposals. In the proposal made by his Delegation and the Delegation of the Republic of Moldova, the alternative source, including fees, would be subject to a condition expressed by the terms “if and to the extent to”. He also said that, if there appeared to be a general consensus on the proposal made by the Delegation of Hungary, his Delegation would not oppose it.

341. Ms. KULIKOVA (Russian Federation) sought further explanation about the alternative sources that could be used for financing the Union. She expressed concerns as regards the way in which the funds would be divided up between Contracting Parties, because each State had its own budget period. Therefore, her Delegation wondered how that would work in practice.

342. The CHAIR pointed out that Article 24(4) provided that contributions by the Member States of the Lisbon Union would be proportionate according to the contribution class to which the State belonged. In other words, if a country belonged to contribution class I, it would pay a portion corresponding to class I, whereas a country belonging to class V would pay a portion corresponding to class V.

343. He then underlined that, in the proposal made by the Delegation of Hungary, item (vi) concerned only the contributions by Contracting Parties, since the contributions by beneficiaries had been moved to item (i) as part of the fees. He expressed the view that one of those contributions could be a grant or a voluntary contribution by Contracting Parties, in view of the importance they might attach to the system. He said that, in the absence of comments from the Committee, he would assume that his interpretation of the text was sufficient.

344. The CHAIR wondered whether the Committee agreed with the proposal made by the Delegation of Hungary in respect of items (i) and (vi) of Article 24(2).

345. Mr. MARTIN (France,) referring to Article 24(2), expressed his preference for the proposal put forward by the Delegations of Italy and of the Republic of Moldova. Concerning the proposal by the Delegation of Hungary, the Delegation of France considered that the issue of collected fees was not sufficiently clear. It wondered under what conditions the amount of the fees would be set by the Assembly of the Lisbon Union. The Delegation concluded by stating that it did not have all the facts required to take a decision on this proposal.

346. The CHAIR, noting that the Delegation of France retained its position, said that fees collected in respect of international registrations were all fees that would be collected by the International Bureau in respect of international registrations, as mentioned under Article 7 and Rule 8. These were all the fees that a beneficiary would have to pay in order to register its appellation of origin or geographical indication.

347. The CHAIR then moved to Article 24(3)(a). He referred to the Non-Paper entitled “Main Committee II - Revised compilation by the Chair of proposals on Article 24(2)(vi), Article 24(3)(a), Article 24(4) and Article 31”.

348. He opened the discussion on Article 24(3)(a).

349. Mr. SCHMIDLIN (Italy) expressed his preference for Alternative A, as proposed by the Delegation of Hungary.

350. Ms. COTTON (United States of America) recalled that her Delegation had proposed Alternative B when it was still unclear on the sources of income in Article 24(2), trying to ensure that there would be a balance between fees and contributions that would fund the expenses of the Lisbon System. However, as her Delegation found out that there were other funds at issue, which were not included in paragraph (2), she could also go along with Alternative A, as proposed by the Delegation of Hungary.

351. The CHAIR noted that no other comments were made and stated that the Committee agreed that Article 24(3)(a) incorporate the text proposed by the Delegation of Hungary.

352. The CHAIR then turned to Article 24(4) and pointed out that the proposal made by the Delegation of the United States of America suggested that the contribution by each Contracting Party be proportional to their relative number of registrations under the Lisbon System. He recalled that the Basic Proposal contained a text relating those contributions to the classes used in the context of the Paris Convention.

353. He then opened the discussion on Article 24(4).

354. Mr. SCHMIDLIN (Italy) expressed his Delegation's preference for the language contained in the Basic Proposal. As pointed out previously, the Assembly could modify Article 24. It would therefore be possible to switch to another system.

355. Mr. RENDÓN ALGARA (Mexico) welcomed the proposal put forward by the Delegation of the United States and considered that it should be discussed further so as to be taken as the basis, should the Member States accept it.

356. Mr. MARTIN (France) agreed with the position expressed by the Delegation of Italy in favor of maintaining Article 24(4) as contained in the Basic Proposal, referring to the class of contribution, even if, given the class level of France, the amount could be increased.

357. Mr. MELÉNDEZ GARCÍA (Costa Rica) also approved the proposal made by the Delegation of the United States and for that reason, the Delegation of Costa Rica required a little more time to examine it before adopting a final position.

358. Mr. POLINER (Israel) seconded the statements made by the Delegations of Costa Rica and Mexico and supported the proposal put forward by the Delegation of the United States of America.

359. Ms. KOPECKÁ (Czech Republic) shared the position of the Delegations of France and Italy and expressed her preference for the text of Article 24(4), as contained in the Basic Proposal.

360. Mr. VANERIO (Uruguay) welcomed the proposal of the Delegation of the United States in so far as all the members of the Committee sought a Lisbon Agreement that was self-sustaining and attractive for current, potential and future members, but also for WIPO Member States. The merit of the proposal of the Delegation of the United States was that it introduced a criterion of justice and equity in the sense that those who used or took more advantage of the system would contribute more to it. As a small developing country, Uruguay welcomed this type of text, in that it added a certain degree of justice and as such echoed what its Delegation expressed in favor of the proposal from the Delegation of the United States and it requested that it be thoroughly examined.

361. Ms. VIEIRA LOPES (Portugal) preferred to retain the text contained in the Basic Proposal with respect to Article 24(4), as it was of the view that a distribution by class was a more equitable system.

362. The CHAIR noted that the Delegations were still divided with respect to Article 24(4) and had requested more time to consider it. He therefore suggested reverting to the issue at a later stage.

363. The CHAIR then turned to Article 24(5) on the Working Capital Fund, while recalling that some Delegations had requested more time to consider it.

364. The CHAIR noted that no comments were made and concluded that the Committee agreed on the text of Article 24(5).

Article 29: Effective Date of Ratifications and Accessions

365. The CHAIR turned to Article 29(4). He referred to the question raised by the Delegation of the Russian Federation concerning a definition of the territory of a Contracting Party which was an intergovernmental organization.

366. He believed that the provision could be considered as agreed by the Committee but asked the Delegation of the Russian Federation whether it would agree with the text as had been modified at its request.

367. Ms. KIRIY (Russian Federation) said that her Delegation could now fully support the drafting of Article 29(4).

368. Mr. GOGILIDZE (Georgia) stated that his Delegation did not support the changes proposed by the Delegation of the Russian Federation, as it considered that the provision at issue was not the place to determine and define the territory of an intergovernmental organization. He observed that the territory of a country was also not defined. He added that in many WIPO treaties, where intergovernmental organizations were Contracting Parties, the territory of the latter was not defined.

369. The CHAIR pointed out that several WIPO treaties contained the exact same language, such as the Singapore Treaty, the Washington Treaty, the Geneva Act of the Hague Agreement and the Madrid Protocol.

370. Mr. GOGILIDZE (Georgia) said that, if the definition added to Article 29(4) was the same as the one contained in the Madrid Protocol, his Delegation had no objection.

371. Ms. LU (China) wondered whether the terms “territory of an intergovernmental organization” could be misunderstood and asked whether the language could be clarified. She suggested referring to the territories of the Member States of the intergovernmental organization.

372. The CHAIR reiterated that the text introduced in Article 29(4) was similar to the one contained in other WIPO treaties. For this reason, he suggested aligning the wording of Article 29(4).

373. He noted that the Delegation of China agreed with that suggestion.

374. The CHAIR concluded by stating that the Committee agreed on the text of Article 29(4).

Article 31: Application of the Lisbon Agreement and the 1967 Act

375. The CHAIR moved to Article 31(1) and referred to the proposal put forward by the Delegation of Italy.

376. Mr. SCHMIDLIN (Italy) underlined that the proposal mirrored the provision of Article 10(3) in the last version of the draft New Act. It would help to ensure the compatibility with Article 24.3 of the TRIPS Agreement. He added that it provided a level of comfort for the current Contracting Parties of the Lisbon Agreement. It would therefore not affect newly acceding Contracting Parties to the New Act. Finally, on the alternative language offered in the proposal, he expressed his Delegation’s preference for the words “no lower protection”.

377. Ms. KOPECKÁ (Czech Republic) lent her support to the proposal made by the Delegation of Italy and expressed her flexibility on the two options presented, namely the words “no lower protection” or “no less favorable protection”.

378. Mr. MOLDOVAN (Republic of Moldova) expressed his Delegation’s support for the proposal put forward by the Delegation of Italy.

379. Ms. VIEIRA LOPES (Portugal) also seconded the proposal from the Delegation of Italy.

380. Mr. KLINKA (Slovakia) lent his support to the proposal made by the Delegation of Italy.

381. The CHAIR noted that no other comments were made and declared that the Committee agreed on the text of Article 31(1), as modified on the basis of the proposal from the Delegation of Italy.

Article 22: Assembly of the Special UnionArticle 26: RevisionArticle 27: Amendment of Certain Articles by the Assembly

382. The CHAIR referred to Article 22(2)(a)(ix), Article 26(2) and Article 27(1)(a), in which the reference to Article 24 had been placed in square brackets. He wondered whether the Committee agreed to keep the reference to Article 24 in those provisions, or to delete the reference.

383. Ms. COTTON (United States of America) informed the Committee that, in the interest of flexibility and in order to move forward, her Delegation withdrew its proposal to delete the reference to Article 24 from Article 22(2)(a)(ix), Article 26(2) and Article 27(1)(a). She, however, expressed the reluctance of her Delegation in doing so, as it still had serious concerns about the sustainable funding of the Lisbon System. She observed that her Delegation had not received a firm commitment to implement maintenance fees for international registrations and to institute mandatory contributions. She added that her Delegation had also not received any commitment on the sustainability of the system other than a general statement of intent.

384. The CHAIR thanked the Delegation of the United States of America for its spirit of cooperation to move the work of Main Committee II forward.

Article 7: FeesArticle 24: Finances

385. The CHAIR reverted to pending issues. The first one concerned the distribution of additional contributions. He recalled that the Delegation of the United States of America had proposed that contributions by the Contracting Parties be proportional to their relative number of registrations under the Lisbon System. That proposal had been seconded by the Delegations of Costa Rica, Israel and Mexico.

386. The second remaining issue related to Article 24(2). The Chair reminded the Committee of the proposal made by the Delegations of Italy and the Republic of Moldova and the proposal made by the Delegation of Hungary. The Delegation of France had expressed its preference for the proposal made by the Delegations of Italy and the Republic of Moldova, while other Delegations had seconded the proposal made by the Delegation of Hungary.

387. The Delegation of France stated that substantial progress had been made and it suggested continuing discussions so as to take a definitive position.

388. Ms. RODRÍGUEZ CAMEJO (Cuba) supported the proposal for contribution proportional to the number of registered countries as in Article 24(4).

389. Mr. MOLDOVAN (Republic of Moldova) indicated that his Delegation had made a written proposal on Article 24(4) which had not yet been printed. In his view, the proposal reflected a compromise text for the provision.

390. The CHAIR suspended the meeting until the proposal from the Delegation of the Republic of Moldova had been made available.

391. When resuming the meeting, the Chair said that he had understood that Main Committee I had agreed to delete the reference to maintenance fees. As no comments were made, he concluded that Main Committee II agreed to delete item (ii) in Article 24(2).

392. The CHAIR invited the Secretariat to prepare a consolidated version of all the Administrative Provisions to be distributed before their adoption by Main Committee II.

393. He then invited comments on Article 24(2).

394. Mr. POLINER (Israel) recalled that his Delegation had initially lent its support to the proposal from the Delegation of Hungary on Article 24(2). However, in the light of the comments made by the Chair relating to Article 7, he expressed the flexibility of his Delegation as, in its view, there were no significant differences between the proposal by the Delegations of Italy and the Republic of Moldova and the proposal put forward by the Delegation of Hungary.

395. Mr. MARTIN (France) indicated that, although it felt that there was very little difference between the two proposals, the Delegation preferred the proposal put forward by the Delegations of Italy and of the Republic of Moldova concerning Article 24(2). He added that the Delegation of France wished however to put into brackets the terms “*or any alternative source derived from the Contracting Parties or beneficiaries, or both*”. It believed that these terms were not clear, as they could encompass maintenance fees, with which it did not agree. The Delegation highlighted, furthermore, that there had been no national discussion on the allocation of expenses and in particular on the obligation of producers, especially those operating in sectors already in difficulty, to pay maintenance fees. Although it was noted that the reference to such maintenance fees was deleted in Article 7, there remained some ambiguity on this subject, to which the Delegation did not wish to commit. The Delegation announced that with regard to income, France would be willing to pay a special contribution. In its opinion, the operating expenses of the Union of Lisbon corresponded to the registration costs. The Delegation concluded by pointing out that this issue of expenses would need to be reviewed during the discussions concerning WIPO (PBC)’s program and budget.

396. The CHAIR turned to Article 24(4).

397. Mr. SCHMIDLIN (Italy) said that his Delegation remained in favor of the text of the Basic Proposal and would continue to work on it in order to accommodate all the interests.

398. The CHAIR recalled that several Member Delegations had expressed their preference for the proposal made by the Delegation of the United States of America.

399. Mr. MELÉNDEZ GARCÍA (Costa Rica) reiterated his continued support for the proposal on Article 24(4) put forward by the Delegation of the United States but added that he likewise acknowledged the effort and the draft paragraph presented by the Delegation of the Republic of Moldova, which would still be thoroughly examined and for which the Delegation required extra time.

400. Mr. POLINER (Israel) restated the support of his Delegation for the proposal made by the Delegation of the United States of America, which was also seconded by the Delegation of Costa Rica. He was of the view that paying on a proportional basis for the number of registrations was fair. It would be difficult for countries which had very few registrations to agree to pay the same amount as countries having a hundred registrations. He concluded by saying that it would be difficult to justify a subsidy from those not using the system to those using it.

401. Ms. CHARIKHI (Algeria) pointed out that her Delegation saw merits in all the proposals made, including the proposal from the Delegation of the United States of America, in discussing the option of proportionality. She suggested having a document which would reflect the three proposals on Article 24(4), namely the text as contained in the Basic Proposal, the proposal from the Delegation of the United States of America and the proposal from the Delegation of the Republic of Moldova. She believed that the Committee should be working on that last proposal.

402. Mr. MARTIN (France) suggested that the financial tables prepared by the Secretariat in relation to the projections for funding contributions in class I be included in the document containing the three proposals, to help guide delegations' decision-making. The Delegation believed that these projections could reassure the delegations of Contracting Parties with only a few registrations, if they could see that there would be a minimal and reasonable annual contribution and that France would pay a major part of the contributions. While noting that the issue of proportionality had never existed in WIPO, the Delegation highlighted that it did not wish to become involved in this process.

403. The CHAIR asked the Secretariat whether it could provide a copy of the projections of possible contributions by Member States of the Lisbon Union based on the contribution classes.

404. Mr. MOLDOVAN (Republic of Moldova) asked whether the Secretariat could also provide a copy of the projections of possible contributions by Member States based on the number of international registrations.

405. The CHAIR observed that projections based on the existing number of international registrations would only reflect the current situation and would not, as such, give an idea of the future.

406. Mr. MOLDOVAN (Republic of Moldova) confirmed that his Delegation would still prefer to obtain these calculations.

407. The CHAIR asked the Secretariat to provide a calculation based on the contribution fees and another one based on the existing number of international registrations.

408. The CHAIR adjourned the meeting.

Sixth Meeting Tuesday, May 19, 2015 Evening

409. The CHAIR referred to President Non-Paper No. 3 containing the consolidated text of the Administrative and Final Provisions, namely Articles 21 to 34, of the draft New Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.

Article 24

410. The CHAIR drew the attention of Main Committee II to Article 24(2). He underlined that, in Article 24(2)(i), the text “fees collected under Article 7(1) and (2)” had been kept and the text within square brackets had been deleted. He added that the provision of Article 24(2)(v) would read “special contributions of the Contracting Parties or any alternative source derived from the Contracting Parties or beneficiaries, or both, if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses, as decided by the Assembly”.

411. Ms. PEROVIĆ (Montenegro) asked whether the square brackets at the end of item (v) would also be deleted.

412. Ms. HERNÁNDEZ NARVÁEZ (Mexico) acknowledged the enquiries and supported the wording recently presented by the CHAIR.

413. Ms. FERRITER (United States of America) sought clarification on the reasons for opting, under item (i), for the language “under Article 7(1) and (2)” rather than for “in respect of international registrations”. She believed that the latter was broader language, providing important flexibility in connection with the deletion of the reference to the maintenance fees and giving the possibility to the Lisbon Union in the future to have additional fees beyond those stated in Article 7(1) and (2).

414. Mr. MARTIN (France), in reply to the question asked by the Delegation of the United States of America, reported that his delegation had had an iterative process with different positions. He noted that the Delegation of Israel, which was a member of the Lisbon Union, had expressed its agreement with the proposal by the Delegations of Italy and of the Republic of Moldova. The Delegation considered the reference to Articles 7(1) and 7(2) to be more reassuring and added that, subparagraph (v) in general expressed openness to other funding sources.

415. The CHAIR turned to Article 24(4) and recalled that three alternatives were proposed: Alternative A reflected the text of the Basic Proposal, Alternative B was contained in the proposal from the Delegation of the United States of America and Alternative C had been proposed by the Delegation of the Republic of Moldova and reflected a combination of the Basic Proposal with the text proposed by the Delegation of the United States of America. The

Chair noted that, in the last sentence of the text in Alternative C, the word “shall” had been replaced by “may”, so that the sentence would read: “The contribution may be partially weighted according to the number of registrations originating in the Contracting Party, as decided by the Assembly.”

416. Ms. FERRITER (United States of America) expressed her strong support for Alternative B. She believed that the change in the last sentence of Alternative C basically eliminated that sentence, as it made it optional. Thus, a contribution unit system would remain providing that intergovernmental organizations, such as OAPI, would pay a Class I contribution, unless otherwise unanimously decided by the Assembly. The Delegate believed that Alternative B was much fairer and expressed the hope that members would support that option.

417. Mr. POLINER (Israel) expressed his Delegation’s strong support for Alternative B, which was fairer, as it was proportion based. If Alternative C were to prevail, his Delegation would suggest to keep the words “shall be” and delete the word “partially”, which appeared to be redundant, as the term “weighted” included the notion of partially.

418. Mr. MARTIN (France) recalled that Alternative C, with the replacement of the word “shall” by “may”, was a point on which his Delegation and numerous other Member Delegations had worked very hard. The Delegation highlighted that this was not an option, contrary to what was said by the Delegation of the United States of America, but a new concept that posed huge problems for France, which had already expressed its concerns. The Delegation emphasized that Alternative C was the result of a compromise between those Delegations that had wanted to introduce this notion of proportionality. However, this compromise constituted the maximum to which the Delegation could commit.

419. The CHAIR drew the attention of the Committee to the estimates prepared by the Office of the Controller, based on an assumed deficit of 100,000 Swiss Francs, contribution classes and actual number of registrations. The Chair invited the Committee to consult the document and to find pragmatic solutions which would achieve a sustainable, balanced and self-sufficient Lisbon System.

420. Mr. SCHMIDLIN (Italy) expressed the view that Alternatives A and B reflected two extremes. Alternative A had shortcomings as it introduced a new concept. A pure proportional system could create a situation where a country, France for example, would have to bear half of the costs of the Lisbon Union, which was unfair. As Alternative C tried to create an intermediate solution, his Delegation invited Delegations to support it, with the “may” formulation. He underlined that Alternative C was a good compromise and a good starting point in establishing special contributions, given the fact that Article 24 could be revised in the future.

421. Ms. KIRIY (Russian Federation) recalled that she had originally opposed provisions based on contributions by Member States. However, in order to show flexibility, her Delegation expressed its support for Alternative C, in its mandatory mode. Considering that the version of Alternative C using the verb “shall” was the fairest one, she opposed replacing “shall” by “may”.

422. Mr. FERREIRA (Chile) reported that after analyzing the different proposals, the Delegation of Chile considered Alternative B to be the most suitable for the interests of Chile as a developing country, as an alternative involving proportionality was what could eventually allow for a greater number of members, including developing countries.

423. Ms. CHARIKHI (Algeria) wondered whether and to what extent the calculations were indicative. Her Delegation supported Alternative C in its original version. In her view, both options, namely a class contribution and a proportionality contribution, should be available. The Assembly of the Lisbon Union would choose the option.

424. Mr. RAMALHEIRA (Portugal), with reference to the contributions calculated on the basis of proportionality and contribution classes, noted that Portugal would pay much more in a system based on contribution classes. However, the Delegate considered that the best solution would be a system based on class contribution combined with elements of proportionality. He believed that that option would be an achievable compromise, as many Delegations had already expressed their support for it. In his view, that solution would enable the Lisbon Union Assembly to subsequently define the best solution for remedying its deficit. That would also ensure the longevity of the Lisbon System and encourage other countries to join.

425. Mr. KUMER (United Kingdom) wished to recognize the flexibility and efforts made by the Delegations of France and Italy. He expressed the preference of his Delegation for Alternative C, including the amendment proposed by the Delegations of France and Italy, which was, in its view, the fairest option.

426. Ms. JOHNSTON (MARQUES) believed that Alternative B, which referred to the relative number of registrations in the Lisbon System, could create some issues from a drafting perspective. While recognizing the flexibility shown by the Delegation of France, she expressed her support for Alternative C.

427. Ms. FERRITER (United States of America) expressed her strong disagreement to the idea that replacing “shall” by “may” would not significantly change the meaning of the last sentence. The Delegate wondered what the provision with “may” would mean and how the Secretariat would do the calculation. Besides, she shared the view of the Delegation of Israel on the term “partially” which did not seem to be necessary. In her opinion, Alternative B was clearer and easier to implement. The relative number of registrations her Delegation interpreted as registrations effected under the New Act.

428. Mr. KUMER (United Kingdom) wondered whether Rule 8 would be discussed by Main Committee II.

429. Mr. MARTIN (France) took the floor on Article 7(5).

430. The CHAIR, wishing to conclude the discussion on Article 24(4), answered that he would revert later to the question raised by the Delegation of the United Kingdom and the intervention made by the Delegation of France.

431. Mr. POLINER (Israel) considered that the proposal made by the Chair with regard to Alternative C, as presented in President Non-Paper No. 3, was the best solution.

432. Ms. FERRITER (United States of America) requested clarifications on the calculation model under Alternative C, in particular the amount of contributions calculated according to the first part of the sentence. She expressed her Delegation's preference for keeping both Alternatives B and C in the text.
433. Mr. BERÁNEK (Czech Republic) expressed his Delegation's preference for Alternative A based on a class contribution system. In his opinion, combining it with other systems, such as the proportionality system, would make the system depart from other WIPO unions. However, in a spirit of flexibility, his Delegation could support Alternative C.
434. Mr. MARTIN (France) believed the Delegation of France had taken the biggest step in accepting this new concept and Alternative C, replacing "*shall*" by "*may*" or even by "*could be*". The Delegation indicated that as this concept was new, it should be defined, and the Secretariat's help would be needed to this end. Nonetheless, it noted that despite the efforts made by the Delegation, some other delegations maintained their original position. The Delegation requested that the document contain the three alternatives, including Alternative C as drafted by the fifteen Member States of the Lisbon Union, that is that it contain the word "*may*" instead of the word "*shall*".
435. Mr. POLINER (Israel) wondered whether the verb "should be" from Alternative B could be used in the second sentence of Alternative C, in order to replace "shall" or "may". That would allow the submission of only Alternative C to the Plenary.
436. Mr. MARTIN (France) noted that the Delegation of France was not alone in defending Alternative C containing the term "*may*" instead of "*shall*", and that was why it was leaving it to the other delegations to express an opinion on this point.
437. The CHAIR observed that some Member Delegations had expressed their support for Alternative B, while others had supported Alternative C. He noted that Observer Delegations were also divided in supporting Alternative B or C. Therefore, the Chair proposed submitting to the Plenary Alternative B in square brackets, and Alternative C in square brackets, with the words "may" and "shall" in square brackets.
438. Ms. FERRITER (United States of America) recalled that her Delegation had asked a question about the operation of the last sentence of Alternative C. Her Delegation did not wish that the amount due according to the first sentence be magnified or weighted according to the number of registrations. Her Delegation had something different in mind. Supporters of Alternative C could consider alternative language, for example that the contribution could be divided in two parts, one part based upon the contribution unit and another part based upon the number of registrations.
439. The CHAIR said that, in his view, it would be for the Assembly of the Member States to decide the mechanism of calculation, whether to use one option or another and in which proportion. This could also depend on the amount of the deficit. Therefore, the text had better not indicate the exact mechanism of calculation.
440. Mr. MOLDOVAN (Republic of Moldova) asked which Delegations had expressed support for Alternative B.

441. The CHAIR recalled that the Delegations of Costa Rica, Cuba, Mexico and Nicaragua had expressed their support for Alternative B during the previous meeting of Main Committee II.
442. Mr. MARTIN (France) noted that, at the end of the last meeting of Main Commission II, progress had been made with regard to Alternative C and therefore invited delegations to outline their position once again.
443. Ms. HERNÁNDEZ NARVÁEZ (Mexico) clarified that during the preliminary discussions, it had spoken in favor of Alternative B, but underlined that in the interim, there had also been meetings with the CHAIR, and that based on these meetings her Delegation had understood that a consensus was swinging towards Alternative C. The Delegation indicated that in the spirit of flexibility and openness, it would be in favor of Alternative B, should this be the consensus.
444. Mr. LIZANO (Costa Rica) stated that, in the interest of achieving greater flexibility, it was also prepared to support Alternative C.
445. Ms. SÁNCHEZ TORRES (Cuba) also supported Alternative C.
446. Mr. MAYAUTE VARGAS (Peru) expressed his preference for Alternative C.
447. Mr. KLINKA (Slovakia) expressed the support of his Delegation for Alternative C.
448. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) also lent the support of his Delegation for Alternative C.
449. Ms. CHARIKHI (Algeria), recalling that her Delegation preferred Alternative C, believed that the best way to proceed was to focus on that alternative. She therefore suggested submitting to the Plenary the text of Alternative C containing all the words “shall”, “may”, “could be” or “should be” within square brackets.
450. Ms. PEROVIĆ (Montenegro) expressed the support of her Delegation for Alternative C.
451. Mr. RAMALHEIRA (Portugal) lent his Delegation’s support for Alternative C. His Delegation endorsed the proposal made by the Delegation of Algeria to submit to the Plenary the text of that alternative with all its variants. He felt that there was wide support from Member States of the Lisbon Agreement for that proposal.
452. Ms. DÍAZ MORENO (Nicaragua) stated that it could not yet make a statement about any of the alternatives proposed. The Delegation said that it had a clear overview because of the information provided by the finance division and reported that it had sent a statement to higher authorities to know their position, so it could then act accordingly.
453. Mr. GOGILIDZE (Georgia) expressed the preference of his Delegation for Alternative C.
454. The CHAIR concluded that the Committee agreed to submit Alternative C to the Plenary, with the words “shall” and “may” within square brackets. The Plenary would eventually take the final decision on the mandatory or optional character of the provision.

Rule 8: Fees

455. The CHAIR turned to Rule 8 and recalled that the Delegation of the United Kingdom had raised a question in that regard.

456. Mr. KUMER (United Kingdom) noted that, in the previous version of Rule 8, the amount of fees stood within square brackets, while, in the latest version, the square brackets had been removed. Referring to discussions as well as to the proposal of the Director General of WIPO to increase the registration fees, the Delegate observed that that had not been reflected in the latest version of Rule 8 and asked whether it was the final version.

457. Mr. HÖPPERGER (WIPO) recalled that it had been decided to include the current amount within the square brackets for purely indicative reasons. He confirmed that there was an ongoing discussion about the review of the fees currently applicable under the Lisbon Agreement, and that a document on that subject had been prepared and presented to the Assembly of the Lisbon Union in 2014. However, the Assembly had decided to wait for the outcome of the Diplomatic Conference before reverting to that proposal.

458. Mr. KUMER (United Kingdom) pointed out that at the 2015 Assembly the Lisbon Union would be invited to accept the proposal to update the fee schedule only as far as the Lisbon Agreement and the 1967 Act were concerned and therefore suggested that the amounts indicated in Rule 8 be taken out from the text for the time being.

459. The CHAIR pointed out that the fees were in the text for indicative purposes, so that they could be taken out. The Chair recalled that Main Committee I had not yet discussed Rule 8.

460. Mr. KUMER (United Kingdom) agreed with the suggestion by the Chair to take out the amount of the fees from the text.

461. Ms. FERRITER (United States of America) concurred with the suggestion to remove the fees from the text. She believed that, under the New Act, the fees would be established by the Contracting Parties of the New Act and that there was no requirement for those fees to be the same as those under the existing Lisbon Agreement and the 1967 Act. All the more so, those Contracting Parties could be different and there was no reason to assume that they would necessarily be the same. The Delegate concluded that it could be helpful to not use the same fees as currently set under the Lisbon Agreement and to leave the amounts in Rule 8 blank.

462. Mr. HÖPPERGER (WIPO) confirmed that the indication of the amount of the fees was of a theoretical nature. The Assembly would determine the amount of the fees when the treaty would enter into force.

463. The CHAIR proposed therefore that the amount of the fees be taken out from the text, while observing that a decision on this should be taken by Main Committee I.

464. Mr. FICSOR (Hungary), while recalling that Main Committee I had agreed to include the current amount of fees on the understanding that they would be reviewed upon entry into force of the New Act and depending on any changes to the Fee Schedule that might be

decided by the Assembly. He believed that, independently of the decision either to include the current figures with that understanding or to use three dots within square brackets, the Assembly would have to revisit the issue upon entry to force in the New Act.

465. The CHAIR requested the Secretariat to prepare the document to be submitted to the Plenary on the basis of a text for Rule 8(1) showing three dots within square brackets instead of the amount of fees.

Article 7: Fees

466. The CHAIR moved to Article 7 and invited the Delegation of France to take the floor.

467. Mr. MARTIN (France), in reference to Article 7(5)(a) on individual fees and after having worked together with other delegations, suggested the following amendment to the last sentence: *“Additionally, the Contracting Party may, in a declaration, notify the Director General that it requires administrative fees relating to the use by the beneficiaries of the appellation of origin or geographical indication in that Contracting Party”*.

468. The CHAIR, noting that the subject matter of the proposal concerned the competence of Main Committee I, proposed to the Delegation of France to raise the issue in the next meeting of Main Committee I.

469. The CHAIR suggested submitting the text of Articles 21 to 34, in accordance with the outcome of the discussions, to the Plenary for consideration. In the absence of comments, he concluded that it was so decided. He thanked all Delegations for their constructive support and collaboration.

470. The CHAIR adjourned the meeting.

Seventh Meeting Wednesday, May 20, 2015 Afternoon

471. The CHAIR announced that the Committee was holding its final meeting. He understood that Main Committee I had worked well and hoped that the same spirit would continue to be shown in Main Committee II. He suggested that the Committee consider the entirety of Chapters V to VII, from Article 21 to Article 34. As regard the square brackets in Article 24(4), he had been informed by several Delegations that they had agreed that, in the last sentence of the provision, the word “shall” should be retained, so that it would read: “The contribution shall be partially weighted according to the number of registrations originating in the Contracting Party, as decided by the Assembly.” Further, Article 29(4), the square brackets relating to Article 17 could be removed.

472. Mr. TOČÍK (Czech Republic) recalled that his Delegation had expressed support for the text of Article 24(4) as contained in the Basic Proposal and was not in favor of any prescriptive language concerning proportionality. Proportionality was not necessarily a fair and equitable concept. On the contrary, as there were no variable costs directly linked to maintaining the Lisbon System in relation to the number of registrations. Moreover,

proportionality could discourage new registrations, including from developing countries, which would have to bear additional costs for maintaining the system and might not find the system to be sufficiently attractive for them. He also pointed out that proportionality was a new foreign element introduced into a WIPO system that had not been sufficiently discussed. Before binding the Assembly on this issue, an analysis of the current fixed and variable costs associated with maintaining the system should be prepared and properly considered. However, for the sake of an emerging consensus on the alternative proposed by the Delegation of the Republic of Moldova, his Delegation would not insist on the original text of the Basic Proposal, although with reluctance. His Delegation would have preferred a text not binding the Assembly as regard the proportionality concept. However, as it did not wish to oppose the final compromise, his Delegation lent support to its submission to the Plenary.

473. Mr. MARTIN (France) stated that the Delegation of France associated itself with the statement made by the Delegation of the Czech Republic and emphasized, in particular, the importance of the responsibility of the Lisbon Union to ensure that the funding system to be implemented served as an incentive. For that reason, the proportionality issue was designed so that weighting would be partial, so as not to dissuade potential applicants from registering future geographical indications or appellations of origin. The Delegation announced that this issue would be taken into consideration during the next sessions of the Lisbon Union Assembly. It agreed with the adoption by Main Committee II of the text proposed and its submission to the Plenary.

474. Mr. GOGILIDZE (Georgia) said that his Delegation supported the submission of the text to the Plenary.

475. Ms. HERNÁNDEZ NARVÁEZ (Mexico) endorsed the submission of the proposals to the Plenary, including the reference to Article 24 in Paragraph 4. The Delegation added that it would join the consensus on the text chosen but that it still remain between brackets.

476. The delegate of Democratic Republic of the Congo congratulated the CHAIR for his work and stated that he was in favor of the transmission of the text to the Plenary of the diplomatic conference.

477. Mr. AZAMI SARDOUEI (Iran, Islamic Republic of) said that his Delegation welcomed the consensus and fully supported the text.

478. Ms. PEROVIĆ (Montenegro) supported the submission of the text to the Plenary for adoption.

479. Mr. SCHMIDLIN (Italy) also supported the transmission of the text to the Plenary for adoption.

480. Ms. VIEIRA LOPES (Portugal) said that her Delegation was in favor of sending the text to the Plenary for adoption.

481. Mr. MOLDOVAN (Republic of Moldova) supported the transmission of the text to the Plenary for adoption.

482. Ms. YOUSFI (Tunisia) stated that she was in favor of the submission of the text to the Plenary for adoption.

483. Mr. MAYAUTE VARGAS (Peru) supported the formal adoption of the text in the Plenary.
484. Mr. FICSOR (Hungary) was in favor of the decision to recommend the articles in question to the Plenary for adoption.
485. Ms. VIGNJEVIĆ (Bosnia and Herzegovina) said that her Delegation supported the submission of the document to the Plenary for adoption.
486. Ms. CHAKHIRI (Algeria) congratulated the CHAIR for his efforts and stated that the Delegation of Algeria was in favour of the transmission of the text to the Plenary.
487. Ms. DÍAZ MORENO (Nicaragua) also wished to endorse the submission of the draft document to the Plenary.
488. Mr. MELÉNDEZ GARCÍA (Costa Rica) supported the text as proposed in the Plenary.
489. Ms. SAGBO (Togo) congratulated the CHAIR for his efforts and stated that the Delegation of Togo favored the submission of the text to the Plenary for adoption.
490. Mr. POLINER (Israel) stated that his Delegation also supported the submission of the document to the Plenary.
491. Ms. RODRÍGUEZ CAMEJO (Cuba) supported the submission of the text to the Plenary for approval.
492. Mr. KLINKA (Slovakia) supported the transmission of the proposed text to the Plenary for adoption.
493. Ms. ARGIROVA (Bulgaria) indicated that her Delegation also supported the submission of the text to the Plenary.
494. Ms. ILBOUDOU (Burkina Faso) agreed with the submission of the text to the Plenary for adoption.
495. Ms. LU (China), referring to Article 27(3), sought clarification on the wording “in accordance with their respective constitutional processes”. She believed that some improvement of the Chinese version of the document would be needed.
496. Mr. KWAKWA (WIPO) confirmed that the language used in Article 27(3) was identical to that in the WIPO Convention and the reference to constitutional processes was a reference to the various domestic processes in the different countries. He said that this provision could be interpreted as “according to the domestic system of the country in question”. He believed that the Chinese text would reflect the same.
497. Ms. LU (China) said that the interpretation of Article 27(3) was acceptable if the English text referred to the domestic legal process.

498. The CHAIR confirmed the interpretation provided by the Secretariat which would improve the Chinese translation in order to reflect exactly the English text.

499. Ms. COTTON (United States of America) said that her Delegation did not support the recommendation of Main Committee II to submit the texts contained in documents LI/DC/14 and 15 to the Plenary. She considered that those texts did not reflect a commitment of the Lisbon Union to financial sustainability. She observed that, during the Conference, her Delegation had learned that the unitary contribution system was used for WIPO programs which were not registration systems. For registration systems, registration fees collected were generally used to sustain those systems. Even when those registration systems ran a deficit, as in the case of the Hague Union with regard to the IT modernization, Member States had agreed to pay back to other unions from which they had borrowed. This was not the case with the Lisbon Union. The Delegate observed that the Lisbon Union had run a deficit for years, but there had been no fee increases for twenty years and no contributions, which were required under the current Lisbon Agreement, had been paid. She stressed that her Delegation had found out that the deficit had been funded by fees, mainly from the PCT and Madrid systems. For her Delegation, this situation was particularly painful as the Lisbon System potentially had negative effects on trademark holders using the Madrid System. The Delegate further pointed out that, in the texts, there was no specific agreement on maintenance fees. Although the texts contained some references to contributions, many of the decisions were left to the Assembly. Moreover, Article 24 could be amended by the Assembly by a three-quarters majority. Many of the financial decisions were shifted to the Assembly in the name of flexibility. However, there was self-interest in not achieving financial sustainability within the Assembly, as had been seen in the past. The Delegate concluded by saying that the texts did not provide the comfort that her Delegation needed to support a recommendation to the Plenary.

500. Ms. MOORE (Australia) informed the Committee that her Delegation shared the concerns expressed by the Delegation of the United States of America. Her Delegation was of the view that the financial provisions in the draft text would continue to create challenges and uncertainty for the future financial sustainability of the Lisbon System. For these reasons, her Delegation could not lend its support to the texts.

501. Mr. KIM (Republic of Korea) said that his Delegation endorsed the statements made by the Delegations of the United States of America and Australia. In addition, he recalled that his Delegation had expressed its reservation in respect of Article 29(2).

502. The CHAIR concluded that there was no consensus, but there was support expressed by the majority of the Delegations present in Main Committee II to submit the text to the Plenary.

503. He thanked all Delegations for their support and flexibility and closed the meeting.

PARTICIPANTS

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prepared by the Secretariat

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The President of the Drafting Committee

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