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Special Union for the Protection of Appellations of Origin and their International Registration (Lisbon Union)

Assembly

Thirty-Fifth (13th Extraordinary) Session
Geneva, September 24 to October 2, 2018

REPORT

adopted by the Assembly

1. The Assembly was concerned with the following items of the Consolidated Agenda (document A/58/1): 1, 2, 4, 5, 6, 11(ii), 12, 24, 29 and 30.

2. The reports on the said items, with the exception of item 24, are contained in the General Report (document A/58/11).

3. The report on item 24 is contained in the present document.

4. Mr. João Pina de Morais (Portugal), Chair of the Assembly, presided over the meeting.

ITEM 24 OF THE CONSOLIDATED AGENDA

LISBON SYSTEM

5. The Chair of the Lisbon Union Assembly recalled some important developments concerning the Lisbon System since the last meeting of the Lisbon Union Assembly the previous year. First, he indicated that the deposit of the first instrument of accession to the Geneva Act of the Lisbon Agreement by Cambodia had taken place on March 9, 2018. As he was aware that other WIPO Member States and intergovernmental organizations were also considering accession to the Geneva Act, and that the deposit of a new instrument of accession had been announced by the end of the week, he encouraged other WIPO Member States and international organizations to follow the example of Cambodia and to expedite their process of accession, so that the Lisbon Assembly would be able to celebrate the entry into force of the Geneva Act at its next session. Secondly, regarding the day-to-day operations of the Lisbon Registry, the Chair indicated that in the previous biennium a total of 61 new applications had been registered and that 30 new international applications had been received since the beginning of the year, three from Bosnia and Herzegovina, five from Italy, one from Mexico and two from Peru, which in turn brought the total number of current international registrations at 1,127, of which 1,010 were in force. He added that those numbers confirmed again this year the renewed interest of Lisbon Union members in the System. Even more interesting, he underlined that deposits for new appellations of origin increasingly tended to originate from Lisbon members outside Europe and that the percentage of deposits from developing countries had been steadily increasing over the past few years. Once again, that confirmed a wider geographical interest in the Lisbon System and its potential to become a truly global system in the coming years. Thirdly, as regards the financial situation of the Lisbon Union, he recalled that in the 2016/17 biennium the total revenue of the Lisbon Union had amounted to 2,358,564 Swiss francs with total expenses amounting to 2,434,114 Swiss francs and that the resulting deficit for the 2016/17 biennium had amounted to 75,550 Swiss francs. He pointed out that such an extremely positive result had been achieved through the payment of subventions by Lisbon Union members in 2016 under Article 11(3)(iii) of the Lisbon Agreement. He further specified that those subventions had amounted to a total of 1,323,488 Swiss francs for the 2016/17 biennium and that, following the decision of the Assemblies in 2017, Lisbon Union members would continue to discuss the financial sustainability of the Lisbon Union in 2018. Turning to the two documents included on the agenda, namely documents LI/A/35/1 and LI/A/35/2, he indicated that they would be addressed separately.

<u>Report on the Working Group on the Development of the Lisbon System</u>

6. Discussions were based on document LI/A/35/1.

7. Introducing the document under consideration, the Secretariat recalled that in 2017 the Lisbon Union Assembly had extended the mandate of the Lisbon Working Group with a view to allowing further discussions on the development of the Lisbon System, including solutions for its financial sustainability. The Working Group on the Development of the Lisbon System held its first session on June 11 and 12, 2018. Two issues were on the agenda of the first session of the Working Group, namely the fee reductions prescribed by Article 7(3) of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and the financial sustainability of the Lisbon Union. Document LI/A/35/1 reflected the outcome of the discussions of the first session of the Working Group.

8. The Delegation of Iran (Islamic Republic of) indicated that they were all aware of the problems faced by geographical indications when trying to obtain recognition in foreign markets. The Delegation was therefore of the view that a system for the international recognition and protection of geographical indications was an important component of the intellectual property (IP) system. The Delegation further indicated that Iran (Islamic Republic of) attached the utmost importance to the protection of its geographical names outside its national territory through the Lisbon System. In that regard, the Delegation pointed out that since the previous session of the Lisbon Union Assembly in 2017, Iran (Islamic Republic of) had submitted 19 new international applications under the Lisbon System, which brought the total number of Iranian international registrations under the Lisbon System to 60. The Delegation also expressed its satisfaction as regards the 26 per cent growth in the number of international registrations under the Lisbon System, mostly from developing countries. In that regard, the Delegation recalled that the number of registrations of appellations of origin from developing countries had doubled in the past 10 years, rising from five per cent in 2007 to 10 per cent in 2017. Regarding the issue of the financial sustainability of the Lisbon Union, the Delegation welcomed the numerous ideas that had been put forward at the first session of the Working Group and also acknowledged the progress made towards reaching an appropriate solution. The Delegation was convinced that a solution to providing financial support to the Lisbon Union would be found, while also securing full respect for the long-standing principles of solidarity and equality of treatment for each area of IP. In order to ensure the long-term financial sustainability of the Lisbon System, the Delegation reiterated the need for a robust promotion of the Lisbon System, including the Geneva Act. By way of conclusion, the Delegation said that it remained committed to the standard procedure in international organizations where solidarity, trust and equal treatment had always been the basic principles of functioning and decision-making.

9. The Delegation of Hungary noted with satisfaction the progress made at the first session of the Lisbon Working Group, and welcomed the recent positive developments related to the Lisbon System especially the filing of new international applications and the accession of Cambodia to the Geneva Act following the deposit of its instrument of accession in March 2018. Since the first accession to the Geneva Act is the result of the dedicated promotional work undertaken by WIPO on appellations of origin and geographical indications, the Delegation encouraged the Secretariat to pursue its enhanced and focused promotion activities. The Delegation supported the adoption of a reduction to 50 per cent of the prescribed amount of fees to be paid by least developed countries (LDCs) in respect of international registrations, as it was of the view that the proposed amendment of the Schedule of Fees would make the Lisbon System more attractive among current and future Contracting Parties. As regards the financial sustainability of the Lisbon System, the Delegation reaffirmed its strong commitment to contribute constructively to the discussions in future Working Group sessions or informal meetings. Upon expressing the view that a reasonable and balanced solution had to be found in order to ensure the long-term sustainability of the Lisbon System, the Delegation cautioned, however, that all possible future measures would have to respect the principle of financial solidarity among unions and budget programs, the capacity to pay and the need for cooperation among unions. The Delegation concluded by saying that WIPO's impressive positive financial results provided a strong basis for allocating the needed resources for maintaining, improving and promoting all of the four global IP registration systems, namely PCT, Madrid, Hague and Lisbon.

10. The Delegation of Italy noted with satisfaction the increased interest in joining the Lisbon System that had been expressed by some WIPO Member States, and reiterated its request for stronger and more incisive promotion activities with a view to attracting new Contracting Parties to the Lisbon System. These promotion activities should be undertaken all the more given the

official launch of the formal procedure for the accession of the European Union to the Geneva Act of the Lisbon Agreement and of the projected entry into force of the Geneva Act.

11. The Delegation of Portugal welcomed the progress made by the Working Group to find solutions to secure the financial sustainability of the Lisbon System in the medium and in the long term. The Delegation said that it would continue to contribute constructively to the discussions in order to find appropriate mechanisms to increase the use of the Lisbon System, thereby ensuring its financial sustainability. The Delegation indicated that any solution that would be proposed would have to bear in mind the Organization as a whole and would have to respect the principles of non-discrimination for industrial property, as well as the ability to pay off the unions. The Delegation supported the adoption of the proposed reduction to 50 per cent for LDCs to help those countries benefit from the Lisbon System from an economic, social and cultural point of view.

12. The Delegation of France associated itself with the statements made by the previous delegations.

13. The Delegation of Switzerland welcomed the first accession to the Geneva Act of the Lisbon Agreement, and expressed the view that the Lisbon System offered major opportunities, in particular since the economy of entire regions on all continents relied to a great extent and sometimes entirely, on the appropriate protection of a geographical indication or an appellation of origin that distinguished the products of that region and embodied the reputation through which such products occupied a specific place on the global market. The Delegation therefore wished to see the Lisbon System develop effectively in order to meet the needs of its members. The Delegation also took note of the serious approach that had been adopted by the Lisbon Union members in order to discuss questions relating to the System's financing. Considering that the System was in a transitional state while everyone awaited the entry into force of the Geneva Act, and given the questions that were still open on the issue of its development and financing, the Delegation supported that a new session of the Working Group be convened in 2019, before the next Assemblies. The Delegation concluded by saying that as a result of its recent modernization by the Geneva Act, the Lisbon System was well placed to expand because more countries would accede which, in turn, would be in the interest of those producers whose geographical indication or appellation of origin was the main IP asset that they had, whatever the level of development of the country in which they were.

> 14. The Assembly of the Lisbon Union took note of the “Report on the Working Group on the Development of the Lisbon System” (document LI/A/35/1).

Proposed Amendments to the Common Regulations under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement

15. Discussions were based on document LI/A/35/2.

16. Introducing the document under consideration, the Secretariat recalled that discussions regarding fee reductions in respect of certain international registrations of appellations of origin and geographical indications as foreseen in Article 7(3) of the Geneva Act were held at the first session of the Working Group on the Development of the Lisbon System on June 11 and 12, 2018. At the end of that session, the Working Group had decided to submit the following two recommendations to the present Assembly: first, to adopt a reduction to 50 per cent of the prescribed amount of fees to be paid by LDCs in respect of international registrations of appellations of origin and geographical indications as foreseen in Article 7(3) of

the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, and second, to apply those fee reductions for a period of three years, starting from the entry into force of the Geneva Act, and that the question of fee reductions under the Lisbon System be re-assessed a year before the expiry of that period. The Secretariat indicated that the revised Schedule of Fees was contained in the Annex to document LI/A/35/2.

17. The Delegation of France noted that the Working Group of the Lisbon Union was proposing to the Assembly the adoption of a decision concerning the implementation under the Geneva Act of a fee reduction which would be of benefit to LDCs, and recalled that the Working Group proposal had generated great concern at the last session of the Program and Budget Committee (PBC). In particular, some delegations had expressed the view that the decisions taken by the Lisbon Union Assembly had not been taken into account by the 28 member States of the Lisbon Union. The Delegation further recalled that the working groups of the various unions were technical meetings in which opinions were exchanged and where anyone was free to table a proposal to be taken forward to the respective Assembly. In other words, working groups were not institutional settings, they were not political, and they were certainly not decision-making bodies. In sum, they were not places where a participant would be able to bind his or her government as was the case in the Assemblies. The Delegation therefore deplored the fact that some delegations had used the proposal of the Working Group under consideration as a way to accuse governments of not respecting their commitments, all the more since the proposed fee reduction was provided for in Article 7(3) of the Geneva Act itself. Regarding the proposal itself, the Delegation recalled that it had been introduced by the Director General at the first session of the Working Group, as reflected in paragraph 12 of the Report (document LI/WG//DEV-SYS/1/5 Prov.), which read "In that regard, he pointed out that other international registration systems administered by WIPO, such as the PCT, the Madrid System or the Hague System, had already put in place a system for granting fee reductions to LDCs. He indicated that the proposal put forward by the Secretariat was a fee reduction of 50 per cent for users and right holders of appellations of origin or geographical indications from LDCs. He therefore invited the members of the Working Group to consider and comment on that proposal while taking into account the financial situation of the Lisbon Union so as to make a recommendation to the Assembly of the Lisbon Union regarding the implementation of Article 7(3) of the Geneva Act". The Delegation further recalled the arguments that had been put forward in favor of the reduction. Firstly, the proposal took into account the financial situation of the Lisbon Union and it had been adopted in order to avoid putting an excessive burden on the Union. Secondly, the proposal had been designed to make the Lisbon System more attractive and to encourage accessions from LDCs. Thirdly, the proposal was appropriate in order to foster the development of LDCs. In view of those arguments, the Delegation indicated that it strongly supported the proposal, and thanked the International Bureau and the Director General for having suggested it. The Delegation also recalled in that context that its Government had been repeating for many years that the financial sustainability of the Lisbon System would only be achieved by a geographical extension of the Lisbon Union itself, as it indeed had been the case with all the other Unions. The Delegation further observed that the Geneva Act had been thought out and designed for that very purpose, namely to expand geographically the Lisbon Union as far as possible. The Delegation further indicated that the conception behind the Geneva Act, its adoption in 2015, its subsequent promotion and its entering into force, as well as the accession of new member States, had always been regarded by France as appropriate solutions for the purposes of ensuring the financial viability of the Lisbon System. The Delegation also noted that, strangely enough, those were also the accomplishments, the legitimacy of which some delegations were trying to bring into question which, in turn, were preventing the Lisbon Union members from achieving their goals in that respect. Meanwhile, the same delegations were accusing the Lisbon membership of not doing

enough to guarantee the financial viability of the Lisbon Union. The Delegation concluded by saying that its intention was and had always been to ensure the viability of the Lisbon Union over the long term. With that objective in mind, the Delegation suggested that the last sentence of the footnote contained in the proposal be modified as follows "These fee reductions will apply three years after the entry into force of the Geneva Act". The Delegation expressed the view that, three years after the entry into force of the Geneva Act, the financial difficulties of the Lisbon Union would have vanished definitively.

18. The Delegation of the Czech Republic supported the amendments to the Common Regulations under the Lisbon Agreement and Geneva Act of the Lisbon Agreement. It noted that the aim of the proposed amendment was to introduce a reduction of the fees to be paid by LDCs in respect of their international registrations of appellations of origin and geographical indications. In that regard, the Delegation was of the view that the proposed fee reduction would indeed be perceived by LDCs as an incentive to join the Lisbon System as soon as possible, and to use it to protect their traditional regional products not only in their respective countries but on a much larger scale. It added that it felt encouraged by the example of the accession of Cambodia, which had been not only the first LDC to accede to the Geneva Act but also the first WIPO Member State to do so. The Delegation hoped that such an accession would bring a positive momentum and that it would allow a speedy entry into force of the Geneva Act. Lastly, the Delegation supported the modification proposed by the Delegation of France.

19. The Delegation of Italy supported the amendment proposed by the Delegation of France regarding the fee reduction for LDCs.

20. The Delegation of Portugal supported the proposal made by the Delegation of France.

21. The Delegation of the United States of America recalled that the first session of the Lisbon Working Group on the Development of the Lisbon System, which was held in Geneva on June 11 and 12, 2018, had been convened to discuss a reduction in fees for LDCs and to establish a plan for the financial sustainability of the Lisbon Union. Unfortunately, the Delegation noted that at the end of that first session of the Working Group no action had been taken to improve the financial sustainability of the Lisbon Union and that only the proposed fee reduction under consideration had been approved. The Delegation went on to say that the legitimacy of the Geneva Act and the financial situation of the Lisbon System would also have to be adequately addressed before the entry into force of the Geneva Act. The Delegation reiterated that the diplomatic conference to conclude the Geneva Act had been fundamentally flawed as it had been negotiated without meaningful input on its provisions by a majority of the WIPO Member States. The Delegation added that the Lisbon Union had not coordinated with the other WIPO unions in its actions, nor had it received the approval of the Paris Union for the Geneva Act, even though the Geneva Act had invited organizations as members that were neither members of WIPO nor members of the Paris Union. As such, the Geneva Act of the Lisbon Agreement could not automatically be considered a WIPO-administered treaty. Instead, WIPO had to take an affirmative decision in that regard. Upon noting that the Lisbon Union believed that by simply promoting the accession to the Geneva Act among other WIPO members, the financial situation could be solved, the Delegation expressed the view that such an outcome seemed unlikely, given the presence of provisions that drastically favored the interests of the existing Lisbon members over those of prospective Contracting Parties. The Delegation reiterated that the financial situation was far from being settled and that the promotion of the Geneva Act by WIPO could not be done by using funds from other WIPO registration systems. In that light, the Delegation said that promotion alone would clearly not

help fund the Lisbon System. The Delegation further noted that the Assembly of the Lisbon Union had been invited to adopt the amendments to the Common Regulations under the Lisbon Agreement and the Geneva Act to set a fee for international registration at 1,000 Swiss francs, a fee for each modification of an international registration at 500 Swiss francs, a fee for providing an extract from the International Register at 150 Swiss francs and a fee for providing an attestation or any other written information concerning the contents of the International Register at 100 Swiss francs. The Delegation observed that the proposed amendment under consideration further indicated that for an international registration referring to a geographical area located in a LDC, a 50 per cent reduction of the prescribed amount would be applied and that, in that regard, the Working Group had also recommended that the fee reduction be applied for three years from the entry into force of the Geneva Act, and that it be re-assessed after two years. In that regard, even though the Delegation supported the concept of reduction of fees for LDCs, it remained concerned that the overall problem of the financial sustainability of the Lisbon System was still not being addressed. The Delegation was concerned that there was no economic analysis to show the impact that the fee reduction would have on the anticipated filings, and also that no fee increase had been foreseen to compensate for the potential revenue loss due to the proposed fee reduction. Although the fee reduction could be seen as an incentive for LDCs to join the Geneva Act, it also took resources to develop and promote distinctive products which perhaps LDCs did not have. The Delegation further observed that even though one LDC had acceded to the Geneva Act, none of the current LDC members of the Lisbon Agreement had registered a single appellation of origin to the present date. Lastly, the Delegation understood that WIPO had been providing some technical assistance to enhance the producers' ability to use the Lisbon System. The Delegation remained concerned that such technical assistance would inappropriately divert resources from other unions in an attempt to increase the Lisbon Union membership. Moreover, the Delegation was concerned that such technical assistance would represent a missed opportunity to encourage further use of the trademark system, a much more widely accepted system for the protection of IP rights associated with distinctive products. The Delegation was of the view that all WIPO Member States would have to come together to bridge the differences between the Lisbon Union and the trademark system to meet the needs of all producers of distinctive products. With regards to the proposal to amend the proposal under consideration, the Delegation said that it represented a further step back by removing a re-assessment of the fee reduction after a defined period of time and by further ignoring financial sustainability considerations.

22. The Delegation of France said that it had already demonstrated in the previous Assemblies, and more specifically during the examination of item 12 of the agenda, the legitimacy of the Geneva Act and of its administration by WIPO. Referring back to its previous statements, the Delegation said that the essential message it wished to convey was that the Lisbon Union was one of the WIPO-administered unions.

23. The Assembly of the Lisbon Union:

(i) adopted the amendments to the Schedule of Fees included in the Common Regulations under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement, in order to introduce a reduction to 50 per cent of the prescribed amount of fees to be paid by least developed countries (LDCs) in respect of international registrations and in respect of each modification of an international registration; and

(ii) decided that the fee reductions mentioned in subparagraph (i) start to apply three years after the entry into force of the Geneva Act of the Lisbon Agreement.

24. For ease of reference, the Annex to this report contains the version of the Schedule of Fees included in the Common Regulations under the Lisbon Agreement and the Geneva Act of the Lisbon Agreement, as amended by the decision set out in paragraph 23, above.

[Annex follows]

AMENDMENT TO THE SCHEDULE OF FEES UNDER THE COMMON REGULATIONS UNDER THE LISBON AGREEMENT AND THE GENEVA ACT OF THE LISBON AGREEMENT

Rule 8
Fees

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

(i) fee for international registration*	1000
(ii) fee for each modification of an international registration*	500
(iii) fee for providing an extract from the International Register	150
(iv) fee for providing an attestation or any other written information concerning the contents of the International Register	100
(v) individual fees as referred to in paragraph (2).	

[…]

[End of Annex and of document]

* For an international registration referring to a geographical area located in a least developed country (LDC), in accordance with the lists established by the United Nations, the fee is reduced to 50 per cent of the prescribed amount (rounded to the nearest full figure). In such case, the fee will amount to 500 Swiss francs for an international registration referring to a geographical area of origin located in an LDC, and to 250 Swiss francs for each modification of an international registration referring to a geographical area of origin located in an LDC. These fee reductions will apply three years after the entry into force of the Geneva Act.