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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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WORKING GROUP ON THE DEVELOPMENT OF THE LISBON SYSTEM (APPELLATIONS OF ORIGIN)

First Session
Geneva, March 17 to 20, 2009

DRAFT REPORT

prepared by the Secretariat

1. The Working Group on the Development of the Lisbon System (Appellations of Origin) (hereinafter referred to as "the Working Group") responsible for exploring possible improvements to the procedures under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (hereinafter referred to as "the Lisbon Agreement") held its first session, in Geneva, from March 17 to 20, 2009.

2. The following Contracting Parties of the Lisbon Union were represented at the session: Algeria, Bulgaria, Costa Rica, Cuba, Czech Republic, Democratic People's Republic of Korea, France, Georgia, Hungary, Iran (Islamic Republic of), Italy, Mexico, Montenegro, Peru, Portugal, Republic of Moldova, Serbia, Slovakia, Togo, Tunisia (20).

3. The following States were represented as observers: Argentina, Australia, Bosnia and Herzegovina, Brazil, Canada, Chile, China, Egypt, Germany, Guatemala, Iraq, Japan, Lithuania, Morocco, Qatar, Romania, Spain, Sudan, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Turkey, United Kingdom, United States of America (24).

4. The Permanent Observer Mission of Palestine took part in the meeting in an observer capacity.

5. Representatives of the following international intergovernmental organizations took part in the session in an observer capacity: European Communities (EC), World Trade Organization (WTO) (2).

6. Representatives of the following international non-governmental organizations took part in the session in an observer capacity: Brazilian Intellectual Property Association (ABPI), European Communities Trade Mark Association (ECTA), International Trademark Association (INTA), MARQUES (Association of European Trademark Owners), Organization for an International Geographical Indications Network (OriGIn) (5).

7. The list of participants is contained in Annex III to this report.

Agenda Item 1: Opening of the session

8. Mr. Ernesto Rubio, Assistant Director General, opened the session and, on behalf of the Director General, Mr. Francis Gurry, welcomed the participants to the first session of the Working Group on the Development of the Lisbon System for the Potection of Appellations of Origin and their International Registration.

9. Mr. Rubio recalled that the Working Group had been established by the Lisbon Union Assembly at its meeting in September 2008 with a mandate for exploring possible improvements to the procedures under the Lisbon Agreement. He also pointed out that the most recent improvements to such procedures had been introduced in 2001 when the Assembly adopted certain amendments to the Regulations under the Lisbon Agreement that came into force in 2002. Mr. Rubio underlined that since then, the Lisbon Union had welcomed six new contracting countries thereby extending its effects to a total of 26 Member States. He also recalled that the Lisbon Union Assembly had considered two further areas of possible improvement of the Lisbon system procedures. The first would consist in allowing the submission of statements of grant of protection by competent authorities of the members of the Lisbon Union, while the second would consist in providing for the possibility of establishing electronic communications between the International Bureau and those competent authorities.

10. Mr. Rubio indicated that, following the preliminary discussions that had been held by the Assembly in 2008, the International Bureau had prepared two proposals for amendment of the Regulations under the Lisbon Agreement, as incorporated in document LI/WG/DEV/1/2 Rev. entitled “Possible Improvements to the Procedures under the Lisbon Agreement” (hereinafter referred to as “the document”). He also clarified that the proposed provisions had been drafted taking into account similar provisions that had recently been adopted as amendments to the Regulations under the Madrid System for the International Registration of Marks (Madrid system) and the Hague System for the International Registration of Industrial Designs (Hague system). Mr. Rubio further said that discussions at the present session of the Working Group would not be limited to those two questions only and that under the proposed agenda item 5 participants were invited to raise any other matter that might require clarification or to suggest further improvements to the Lisbon system. He also indicated that, in order to facilitate the discussions of the Working Group, the International Bureau had prepared Annex II of the document LI/WG/DEV/1/2 Rev. which provided a general overview of the Lisbon system, with a description of its basic features and flexibilities.

11. Mr. Rubio said that, if the Member States considered it desirable to take steps to further upgrade and modernize the Lisbon system so as to make it more attractive to a broader membership, somewhat in line with what had happened with the Madrid and Hague systems the International Bureau was ready to provide the necessary technical and legal support, both in the framework of the present Working Group and of the Lisbon Union Assembly.

Agenda Item 2: Election of a Chair and two Vice-Chairs

12. Mr. Mihály Zoltán Ficsor (Hungary) was unanimously elected as Chair of the Working Group, while Mr. Randall Salazar Solórzano (Costa Rica) and Mr. Belkacem Ziani (Algeria) were respectively elected as Vice-Chair and second Vice-Chair.

13. Mr. Matthijs Geuze (WIPO) acted as Secretary to the Working Group.

Agenda Item 3: Adoption of the Agenda

14. The Working Group adopted the draft agenda (document LI/WG/DEV/1/1 Prov.) without any modification.

Agenda Item 4: Possible Improvements to the Procedures Under the Lisbon Agreement

15. Discussions were based on document LI/WG/DEV/1/2 Rev.

16. The Chair pointed out that the meeting came at a time when both WIPO and the Lisbon system faced important and complex challenges. He added that he was convinced that the activities of the Working Group could promote a number of strategic goals of the Organization, including but not limited to the balanced evolution of the international normative framework for intellectual property, the provision of premier global intellectual property services facilitating the use of intellectual property for development, as well as addressing intellectual property in relation to global policy issues. The Chair went on to say that he was conscious of the clear mandate the Assembly of the Lisbon Union had given to the Working Group and that he would do his utmost to facilitate the fulfillment of the tasks it had been entrusted with. He indicated that, in line with the mandate of the Working Group, possible improvements to the procedures under the Lisbon Agreement would have to be explored and also said that participants should not forget that the Working Group had been established for the development of the Lisbon system. He was confident that revitalizing the international protection of appellations of origin could certainly be an area where different regional groups of WIPO could find common grounds. In his view, geographical indications could serve as an excellent example of how the protection of intellectual property rights could effectively meet the special needs of developing countries. An updated Lisbon system, streamlined and user-friendly, would be more effective and might thus lead to a significant enlargement of the Lisbon Union membership.

17. The Delegation of Iran (Islamic Republic of) referred to the various suggestions that had been presented in Lisbon during the celebration in October 2008 of the 50th anniversary of the adoption of the Lisbon Agreement and indicated that it supported the strengthening of the Lisbon system. The Working Group constituted a useful forum and an opportunity for contracting countries to address amicably the issue of possible amendments to the Regulations under the Lisbon Agreement, with a view to making the system more attractive to users but also to encourage other Member States to join the system in order to protect their appellations of origin. The Delegation went on to say that it considered the Working Group as an excellent opportunity for Contracting Parties to address all the requirements of the system and suggested that the Working Group should propose to the Lisbon Union Assembly an extension of its mandate in order to pursue discussions.

18. The Delegation of Iran (Islamic Republic of) added that it supported the modernization of the system and that, since it was fully aware of the importance of the negotiation process for Contracting Parties, it believed that the approach of continuing the discussions on any possible amendment should be guided so as to, firstly, strengthen the core goal of the Lisbon Agreement; secondly, take into account the interests of all Member States in the process; and, thirdly, work in such a way as to enlarge the number of countries acceding to the Agreement without sacrificing the goals of the Agreement. The Delegation also stated that any amendment to the Agreement or its Regulations should be carried out in such a way as to support the core aim of the Treaty, namely, the protection of appellations of origin against any kind of imitation or misuse.

Statements of Grant of Protection

19. The Secretariat introduced the proposal for "Statements of Grant of Protection" as contained in paragraphs 9 to 27 of the document. The Secretariat recalled that procedures for the modification and recording of the statements of grant of protection had already been introduced in the Madrid and Hague systems since 2008. As explained in the document, a basic feature of the Lisbon system, as in the case of the Madrid and Hague systems, was that any new registration would be effective if not refused after a certain period of time under the principle of tacit acceptance, which under the Lisbon system meant one year from receipt of the notification of the new registration. In that regard, the Secretariat pointed out that, in practice, an increasing number of countries were already in a position to take a decision on granting protection or not for the newly registered appellation of origin well before the end of the one-year period. Under those circumstances it seemed beneficial to holders of such registrations to know well before the end of the prescribed time limit that their appellation of origin had been accepted through the receipt of a positive statement that their right had indeed been accepted. Statements of grant of protection could play a role if a country was not in a position to fully grant the right but only partially. In that regard, the Secretariat pointed out that such feature was already present in the Lisbon system in the sense that it was possible under existing procedures for countries to partially refuse an appellation of origin with respect to a particular word featured therein, or with respect to a particular use of the appellation for a particular product. For those types of situations, it was now proposed that countries would have the option, instead of issuing a partial refusal with respect to that specific word or use, to issue a statement of grant protection. The advantage of this option would be that the holder of the right would have a positive statement in his hands. The third situation explained in the document related to a situation that could occur later on in time.

For example, if a country had submitted a refusal initially within the one-year period but later on in time had decided to withdraw such refusal, wholly or in part, under the proposed provisions that country would be able to issue an affirmative statement of grant of protection or partial grant of protection, instead of a withdrawal of the refusal, in whole or in part.

20. The Delegation of Italy, noting that it was important for the Lisbon system to be in line with the Madrid system and the Hague system, said that it welcomed the proposed introduction to the Lisbon system of the facility for issuing optional statements of grants of protection. The Delegation indicated that the introduction of such a facility would bring transparency and cohesion to the Lisbon system and also remove any ambiguity that could be caused by the principle of so-called tacit acceptance. Furthermore, the introduction of such a facility would provide right holders with additional certainty insofar as they would, in many cases, have written assurance that their appellations of origin had been accepted by the competent authority of a given contracting country.

21. The Delegation pointed out, however, that competent authorities would require time in order to implement any such change in their internal procedures and that national legislations might need to be revised accordingly. For example, under the Italian system, which was closely connected with the European Community system, whenever the competent authorities of Italy received a notification of a new international registration, it had to send the notification to the Ministry of Agriculture for its approval or to determine whether there was any ground for refusal. Currently, in this regard, between the Ministry of Economic Development and the Ministry of Agriculture a principle of tacit acceptance applied but, if a written statement of grant of protection had to be issued, the national authorities in question would need to change the current procedure existing between them, as the Ministry of Economic Development would need a written answer from the Ministry of Agriculture. Such a change in the national procedures would require time.

22. The Chair recalled that the proposed amendment was for the introduction of an optional procedure and that it would be up to contracting States to decide whether and when they would switch to the proposed system.

23. The Delegation of Iran (Islamic Republic of), noting that the Lisbon Agreement was both a procedural and a substantive Agreement, stated that procedural changes in the system might also have substantive implications in the contracting countries. Nevertheless, modernization of the Lisbon system would appear to be warranted, in view of the fact that, in the course of the past 50 years the Agreement had attracted only 26 Member States and given that only some 800 appellations of origin had been registered under the Lisbon system. However, the Delegation expressed its concern for the preservation of the integrity of the system, as this integrity could be compromised if coexistence with a homonymous appellation of origin was allowed. The Delegation would, therefore, appreciate further clarification in this regard. The Delegation said that its country had geographical names in common with many neighboring States. When referring to Article 5(6) of the Lisbon Agreement, the Delegation underlined the importance of recognizing that different countries had different practices and different standards of protection with regard to the protection of appellations of origin. The Delegation also spoke about the relationship between the Lisbon Agreement and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and expressed its desire that resulting issues be discussed. In particular, the Delegation wished to hear the experience of other delegations.

24. Responding to the comments made by the Delegation of Iran (Islamic Republic of) concerning the proposed amendments under discussion, the Secretariat noted that those comments related to a feature of the Lisbon system that in fact already existed, namely, the right for the competent authority of a contracting country to refuse, either partially or wholly, protection for an internationally registered appellation of origin. The proposed amendment of the Regulations related to the optional issuing by the competent authority of a statement of grant of protection in the circumstances set out in the proposed amendment. In other words, the proposed amendment was not setting out to impose upon the competent authorities of contracting countries any obligation where none had previously existed.

25. With regard to the comments of the Delegation of Iran (Islamic Republic of) related to the sharing of certain homonymous appellations, the Secretariat clarified that the Lisbon Agreement did not require the competent authority of a contracting country to accept coexistence of homonymous appellations. On the contrary, the competent authority of a contracting country had the right under the Lisbon Agreement to refuse an internationally registered appellation of origin on the basis of the existence of a homonymous appellation of origin protected in its territory. In spite of that, the Secretariat pointed out that some countries did allow for coexistence in very specific circumstances. If adopted, the proposed amendment would allow the competent authority of such a country to issue, if it so wished, a statement of grant of protection in respect of a newly registered appellation of origin while also acknowledging the existence of a protected homonymous appellation of origin at the same time.

26. The Delegation of Iran (Islamic Republic of) indicated that further clarification was needed, in particular if an appellation of origin appeared to be a combination of an appellation of origin and a trademark and application of paragraph (3) of Rule 11*bis* would be in contradiction with other commitments that a country might have under the TRIPS Agreement, or any bilateral free trade agreement the country might have entered into.

27. The Chair noted that some of the points made by the Delegation of Iran (Islamic Republic of) went beyond the proposed amendment. To the extent that they did, the issues in question could be discussed under Agenda Item 5 when “Other matters” would be addressed, including for example, the relationship between the TRIPS Agreement and the Lisbon Agreement.

28. The Delegation of the Czech Republic expressed its support for the proposal in general and agreed with the point that had been made by the Delegation of Italy, namely that some changes in national procedures would be required. As far as the points raised by the Delegation of Iran (Islamic Republic of) were concerned, the Delegation agreed with the response given by the Chair to the extent that some of those points went beyond the issues intended to be discussed by the Working Group under the current agenda item. However, the Delegation would appreciate clarification of the proposed provision for the notification of a partial refusal in respect of an appellation of origin.

29. Firstly, the Delegation of Peru also thought that the relationship between the Lisbon system and TRIPS could be analyzed under Item 5 “Other Matters” of the Agenda. However, it added that the issue seemed very complex and would somehow elude the subject of the Working Group meeting. Secondly, referring to the statement of Iran (Islamic Republic of), the Delegation stated that the issue of homonymous appellations was also cause for concern. Similarly, the Delegation also recalled that Peru had supported the general idea of amending

the Regulations as long as great care was taken at the drafting stage, and added that it would like to submit some proposals to amend Rule 11*bis* as the issue of homonymous appellations involved not only granting a right but also the effective registration of the appellation of origin by the competent authorities. Lastly, referring to the statement made by the Delegation of Italy, the Delegation mentioned that although the notification system was optional some contracting countries would need to amend their legislation.

30. The Delegation of Hungary, supported by the Delegation of Bulgaria, expressed its support for the proposal to introduce the facility for issuing statements of grant of protection. The Delegation, noting the optional nature of the proposed provisions, said that such a facility would help revitalize the Lisbon system and make it more flexible and attractive for users, while also encouraging new accessions.

31. The Delegation of Bulgaria indicated that it was willing to support the proposals aimed at improving procedures under the Lisbon Agreement. The Delegation added that it considered these proposals as an open door towards developing the Lisbon system as statements of grant of protection were wholly optional, and were a possibility offered to interested countries. Moreover, the Delegation expressed its support for the statement made by the Czech Republic on partial refusals.

32. The Delegation of France recalled that the Lisbon Agreement was of international relevance, that it had its place as regards protection of appellations of origin and that it was appropriate to revitalize it so as to grant it its proper place in international fora. The Delegation underscored that the proposal submitted by the Secretariat was quite technical and consequently only dealt with some of the planned aspects for revitalizing the Agreement. On the proposal in question, the Delegation stated that implementing a positive acceptance of protection could be anticipated but that internal procedural time limits should be taken into account as its implementation would require consultations with national operators and national administrations. Therefore, compared to an implicit acceptance, they could probably gain an extension of six months but they might not be able to go much faster as consultations should take place first.

33. The Delegation also underscored that the subject of partial refusals was a particularly delicate and complex matter. It stated that France had already experimented with it in the case of the appellation of origin "*Pisco*" of Peru. The Delegation stressed that at the time, it had noted that the Lisbon Agreement already provided for implementing partial refusals to reconcile the various interests and rights likely to clash in the national territory in which protection was sought, without however there being a genuine framework for partial refusals. In order to limit the concerns of some countries, the Delegation believed it was necessary to frame partial refusals better but also to oblige States to substantiate partial refusals.

34. So as to improve the Lisbon Agreement, the Delegation indicated that it would be judicious to plan for a dispute settlement mechanism as well as an obligation on the part of States having issued a partial refusal or partial acceptance, to contact the applicant in order to remedy the partial refusal. The Delegation believed that discussion of other improvements should be contemplated, in particular with a view to dealing with the cases of homonymous appellations of origin or translations of appellations of origin.

35. The Delegation of Algeria stated that it had noted proposed Rule 11*bis* and underscored that the possible adoption of this Rule should not generate further commitments for contracting countries. The Delegation stressed that the optional nature of this new provision should be clearly reflected in its wording. Further, the Delegation indicated that the concerns expressed by the Delegation of Iran (Islamic Republic of) merited detailed study so as to define better the legal implications of such amendments at the international level.

36. The Delegation of Georgia, referring to paragraph (3)(b) of proposed new Rule 11*bis*, noted that the provision was silent as to the date of commencement of the protection after the withdrawal of a refusal, while such information could be of great benefit to the right holder.

37. The Chair noted that a number of delegations had sought clarification with respect to the issue of partial refusals and, in such context, underlined that the real novelty in the amendment being proposed was not the question of partial refusals as such, but, instead, the introduction of an optional system for the issuing of statements of grant of protection. In other words, the proposed amendment was simply mirroring the existing possibility of issuing a partial refusal as contained in the current Regulations. He referred in particular to Rule 9(2)(iv) which stated that the declaration of refusal had to contain "where the refusal concerns only certain elements of the appellation of origin, those elements that it concerns". He pointed out that such provision only allowed and did not require the competent authorities of contracting countries to issue partial refusals. The Chair also recalled that Rule 11(1) concerning the notification of a withdrawal of a declaration of refusal read as follows: "any declaration of refusal may be withdrawn, in part or in whole, at any time by the authority that notified it". In the Chair's view, that element showed that the current Regulations already envisaged the possibility of a partial withdrawal of a declaration of refusal, and that it was not the amendment proposed by the International Bureau that would be introducing such partial refusal. He also pointed out that all the rules that applied to total refusals also applied to partial refusals and that there were only specific rules concerning partial refusals, to the extent that these appeared to be necessary. In any case, the grounds on which either a total or a partial refusal was based had to be indicated in the notification to the International Bureau.

38. The Delegation of Spain recalled that it was participating in the meeting as an observer but added that Spain had signed the Lisbon Agreement without having ratified it to date. The Delegation stated that it was extremely interested in moving towards the Lisbon system but that at the same time it wished that the following principles be respected: that is, that the system should be more flexible but also more transparent and effective. The Delegation recalled that Spain had approximately 115 appellations of origin already legally protected in Spain and within the European Community and that it would be pleased to join the Lisbon system in order to boost it. Additionally, the Delegation mentioned that perhaps one of the reasons why the system did not appear successful was due to its excessive rigidity despite the fact that it had standards which enabled flexibility. The Delegation of Spain declared that it welcomed the proposal of the Secretariat and indicated that it was willing to support it on the condition that the principles of flexibility, transparency and legal certainty were respected. It added that the proposal required amending to take into account the previously formulated comments of the Delegations of Bulgaria, the Czech Republic and France. Lastly, it believed that it was vital to explore the idea of having a dispute settlement mechanism.

39. The Delegation of Romania began by underlining that, similar to Spain, Romania had signed the Lisbon Agreement but had not yet ratified it, before adding that its intention was clearly to ratify the Agreement in question. The Delegation agreed with the statements made by the Delegation of Spain, which had encountered the same problems as Romania, and expressed its appreciation of the statement made by the Delegation of France.

40. The Delegation of Morocco stated that as an observer, it was very much in favor of reforming the Lisbon system and that it wished to continue to follow and contribute to the work of the Working Group on the Development of the Lisbon System. Such work should lead to proposed and effective improvements, in particular in terms of substance, to the Lisbon Agreement so as better to meet the expectations of users and Member States, following the example of the improvements to the Madrid system in particular as regards its Protocol. Lastly, the Delegation wished to express its support for the references to the relationship between the Lisbon Agreement and the TRIPS Agreement under item 5 of the Agenda.

41. The Representative of ECTA, noting that the system of issuing statements of grant of protection was working extremely well in the Madrid system, questioned the utility of a statement of partial grant of protection in the Lisbon system, concomitantly with the declaration of partial refusal. In his view, when there was a partial refusal that automatically meant that the rest was accepted, so he wanted to know what was the use of making a statement of partial grant of protection in circumstances where there was a declaration of partial refusal.

42. The Representative of INTA said that he wished to react to some of the comments that had been made by a number of delegations, in particular with regard to the issue of partial refusals. In his view, a common reflection had to take place as to what was intended to be achieved through the amendments that were being proposed to the Regulations under the Lisbon Agreement, in order to avoid that these would miss the mark or create legal uncertainty. Making reference to current Rule 9(2)(iv), which related to refusals concerning "only certain elements of the appellation of origin", he requested additional clarification as to what was intended to be covered by that provision. He recalled that the Secretariat had earlier indicated that "certain elements" could refer to certain words or to certain uses. As an illustration, he used the example of the denomination "*Camembert de Normandie*", and indicated that the word "*Camembert*" was generic while "*Camembert de Normandie*" was an appellation of origin. In that case, the words "*Camembert*" or "*Camembert de*" were disclaimed and were not protected under the appellation of origin. Again, the Representative of INTA referred more specifically to the notion of "certain uses" to indicate that in that respect he failed to find in Rule 9 a reference to "certain uses" or an inference that a partial refusal might concern certain uses of the denomination.

43. Making reference to the document on the basis of which the Assembly of the Lisbon Union in September 2008 had established the Working Group, the Representative of INTA noted that that document referred to declarations of partial refusal that would seek to accommodate the coexistence of homonymous appellations of origin in certain territories. He was of the view that the objective, at the time of the submission of that document before the Assembly, was to introduce a system that would cater also for the case of coexistence of

homonymous appellations of origin. The Representative said that, if that was indeed the case, then it was necessary to make sure that the text of the Regulations as it stood did, in fact, cater for such types of partial refusal and, if it did not, that the text would have to be amended to that effect.

44. With regard to the issue of statements of partial grant of protection concomitant with partial refusals, and making reference to the comments by the Representative of ECTA, the Representative of INTA said that the real question was whether such a statement of partial grant of protection would add anything to the partial refusal.

45. The Representative of OriGIn said that the producers of appellations of origin were, in general, in favor of any attempt to revitalize the Lisbon Agreement in order to stress its flexibilities and attract additional Member States. He also indicated that he wanted to mention two points related to the ongoing discussion. First, with regard to the crucial issue of partial refusals, he said that it would be interesting to have from the Secretariat some statistics on concrete cases of partial refusal notified by States. Secondly, the Representative said that it was important that some conditions be attached to the possibility of issuing partial refusals and that it would be of interest to further develop the notion and reflect it in proposed Rule 11*bis*.

46. The Representative of Serbia, referring to proposed new Rule 11*bis* and to the possibility of issuing a statement of partial grant of protection, said that, in addition to the elements to be provided under proposed subparagraph (2)(b) of the Rule, the statement should give also some form of explanation for the decision to partially refuse and to partially grant protection.

47. Responding to the various comments of delegations, the Secretariat said that the notion of partial refusal had been introduced in the Lisbon Regulations in 2001(Rule 9(2)(iv)) and, at the time, an explanation had been given in document LI/GT/1/2 as to what was meant by such partial refusals, based upon certain practices that had been encountered up to then. In that document, the Secretariat had, as an example, referred to the denomination "*Camembert de Normandie*", which was partly generic and partly a geographical name. The proposal, at the time, was intended to allow countries to partially refuse those elements of the appellation of origin which they could not accept, such as the word "*Camembert*" in the given example.

48. However, more recently, the Secretariat had been confronted with the case of "*Pisco*", as mentioned earlier by the Delegation of France. He recalled that Peru, following its accession to the Lisbon Agreement in 2005, had registered "*Pisco*". The other member countries then had had a period of one year within which to refuse protection for the appellation of origin and a total of nine member countries had issued such a refusal. However, when those refusals were received by the International Bureau, they actually rather appeared to be acknowledgements of protection, as they stated that the appellation of origin "*Pisco*" from Peru would be protected in the territories of those nine countries subject to one exception: the title of protection could not be used to stop use of the denomination "*Pisco*" on products originating from Chile. It appeared that those nine member countries had concluded bilateral agreements with Chile under which they were obliged to protect the Chilean appellation of origin "*Pisco*". The question thus arose as to whether such a declaration of refusal could be accepted under the Lisbon system.

49. The Secretariat indicated that, on that occasion, it had gone through the negotiating history of the Lisbon system, because neither the text of Rule 9 nor the Agreement itself in Article 5 gave a clear indication as to whether such refusals could be accepted or not. The Secretariat had, in particular consulted the Acts of the Diplomatic Conference in Lisbon in 1958 and had found the passage reflected in footnote 9 of Annex II of document LI/WG/DEV/1/2 Rev., as prepared for the present session of the Working Group, stating that: "the procedure envisaged provides countries, which received 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 Secretariat further noted that in practice, over the years, a number of refusals had been based indeed on various grounds, whenever the competent authority was not convinced that the appellation met the definition of the Lisbon Agreement. In other words, any situation of law or fact could be used as a refusal. Such refusal could be subsequently debated between the countries concerned to reach a common understanding. Under those circumstances, the Secretariat had taken the view that the International Bureau was not in a position to refuse the nine refusals that had been notified in the "*Pisco*" case and had decided to record these partial refusals in the International Register.

50. Continuing, the Secretariat said that, since those refusals were not really refusals, the question had, however, arisen as to whether a particular provision had to be added in the procedures to allow for the recording of the same content, but positively stated. At the same time, countries should remain free to continue to notify a refusal. Moreover, if the country preferred to refuse the appellation of origin totally, it should remain free to do so as well. The Secretariat concluded by saying that the proposal under consideration sought to allow countries that already allowed coexistence of two homonymous appellations of origin under their national systems, to actually have that recorded in the International Register. The Secretariat added that failure to allow this would result in the International Register not being in line with reality, since the actual situation in the countries in question would be different from what would appear in the International Register. Hence, the Secretariat had decided to accept such partial refusals as they were. The Secretariat noted that the same reasoning applied to partial withdrawals of refusals which had also occurred. For example, it happened that two of the nine countries referred to had, in fact, initially issued total refusals for "*Pisco*" and later decided to partially withdraw these refusals.

51. Referring to the concern raised by the Delegation of Italy and other delegations about the need to change internal procedures as a result of the introduction of a facility to submit statements of grant of protection, the Secretariat said that this was more an internal issue for each Member State than a matter for the Working Group to look at. Furthermore, the Secretariat assumed that, under the current situation when a competent authority received a notification of a registration, it had to consult the same authorities as well. That being so, perhaps the main difference between not issuing a refusal and issuing a statement of grant of protection would be that the competent authority would have to write down, following its consultations, what was actually granted and pass that along the chain of authorities again.

52. The Secretariat observed that the question raised by France concerning the addition of an obligation to provide grounds in the case of partial refusals as well, had already been answered by the Chair. The Secretariat confirmed that the same provisions not only applied both to withdrawals of total refusals and to withdrawals of partial refusals, but also to partial refusals and total refusals.

53. Referring to concerns raised by the Delegation of Algeria, the Secretariat agreed that it might be useful to underline more clearly the optional nature of the proposed procedure for statements of grant of protection, by making specific reference to that effect in the title of the proposed provisions.

54. In response to the comment made by the Delegation of Georgia with regard to the date of effect of withdrawal of a refusal, the Secretariat said that the provisions of Rule 11 only said that what had to be notified to the International Bureau was the date on which the declaration of refusal was withdrawn. It appeared to be a matter for the competent authority of each contracting country to determine the date of effect of a withdrawal.

55. With regard to the comments made by the Representative of ECTA concerning the utility of a partial statement of grant of protection next to a partial refusal, the Secretariat said that the benefit of such a statement was that it gave the right holder a positive statement which, for example, could be of benefit to a right holder seeking to argue his rights.

56. Referring to the comments by the Representative of INTA as to the necessity to issue a partial grant in combination with a partial refusal, the Secretariat noted that if only a partial grant was issued within the one-year period, without the issuing of a partial refusal at the same time, there would not be a refusal at all. In the absence of a refusal, the effect of the Agreement in terms of granting protection would kick in in full. However, if the Member States would be of the opinion that a partial grant was inherently a partial refusal and would meet the requirements of Article 5 of the Agreement, the issuance of a partial refusal in combination with a partial grant could be left out.

57. Recalling the request for concrete cases and statistics on partial refusals made by the Representative of OriGIn, the Secretariat noted that there had not been many since the procedure for the issuing of partial refusals had not been in existence for long, or at least explicitly contained in the Regulations, but that a few cases could still be mentioned, as could be found in the Lisbon Express database. For example, a number of partial refusals had been issued by Peru in respect of the seven internationally registered appellations of origin that contained the word "*Champagne*". The international registration for "*Champagne*" had been refused completely, as there were prior users in Peru. The other six international registrations had been partially refused, i.e. only to the extent that they contained the word "*Champagne*". The Secretariat added that, meanwhile, Peru had withdrawn all those refusals, presumably as a result of negotiations between France and Peru. The Secretariat also referred to international registration No.837, which included the Czech word "*Budějovice*" and the German name "*Budweiser*". Italy had refused that registration partially, as the refusal only concerned the German name. The Secretariat also referred to a couple of international registrations that had been refused at the time when a specific procedure for partial refusals did not yet exist. Those registrations, No. 55 and 56, concerned two Czech appellations that had been refused by France because they contained the word "*Gobelin*" and that word was reserved in France for tapestries from a specific French manufacturer.

58. The Delegation of Iran (Islamic Republic of) referred to the concerns that had been expressed by a number of delegations regarding the complexity of the issue and the legal and trade implications of a partial refusal, and pointed out that there seemed to be different interpretations of the notion of partial refusal. With regard to the optional nature of statements of grant of protection, the Delegation said that two aspects needed to be considered, i.e. the political and administrative dimension and the legal basis. The text

of Rule 9 already made reference to the grounds on which a refusal was based, but issues still remained to be clarified. Referring to the concerns raised by several delegations regarding the necessary modification of domestic procedures, the Delegation further observed that in some countries multiple authorities with different internal rules and regulations were often in charge of the issue of geographical indications. Therefore, additional coordination on the legal and administrative aspects was needed. The Delegation did not see any urgency regarding the introduction of the notion of "partial statements of grant of protection" into the Lisbon system. Economic aspects could be addressed in bilateral agreements and, as regards the legal aspects, paragraph (2) of proposed Rule 11*bis* should be redrafted.

59. The Chair opened the floor for drafting suggestions on the proposed new provisions. He recalled that the Assembly of the Lisbon Union expected the Working Group to present as many concrete results as possible to its next session in September 2009. It was in that spirit that participants had to embark on the exercise of discussing the proposals made by the International Bureau for amendments to the Regulations.

60. The Delegation of Chile recalled that during its twenty-third (6th Extraordinary) Session held from September 22 to 30, 2008, the Lisbon Union Assembly had supported the creation of a Working Group as it seemed advisable to revise the Lisbon Agreement and adapt to the new realities as much as possible. Making reference to the last statement of the Secretariat on the subject of partial refusals, the Delegation stated that the Secretariat had clarified that attention focused on a concept which the Lisbon system had facilitated and that it was no longer called into question. On the same subject of partial refusals, the Delegation added that, as far as it understood, the statements of partial refusal of some countries were not refusals, as in the case of the application for protection of "*Pisco*" of Peru, given that those countries had signed free trade agreements with Chile and that in the framework of those agreements, protection had been granted for "*Pisco*" as a Chilean appellation of origin but not exclusively as Chile in its free trade agreements had always invoked the principle of homonymy when protecting appellations of origin of its products. It added that without the possibility of notifying a partial refusal those countries that had recognized the appellation of origin "*Pisco*" as originating in Chile in the bilateral agreements would simply have had to refuse the subsequent application for protection of Peru by means of the Agreement. In its view, the amendments in question would clarify those situations in which a Member of the Lisbon Union believed that two homonymous appellations of origin might coexist in the same territory or in other situations where total protection for a requested term could not be granted via the Agreement.

61. To conclude, the Delegation of Chile stated that it warmly supported the process of modifying the Lisbon system to bring it more in line with the times. In reference to the statement made by the Delegation of Spain, it specified that it also hoped for a more flexible, transparent system, which would respect the rights of others.

62. The Delegation of Algeria thanked the Secretariat for the clarifications provided and recalled that on the optional nature of statements of grant of protection, it wished, so as to keep the flexibility of the system, that its optional nature be underscored by adding the expression "optional" in the heading of Chapter 4, which would become "Optional Statements of Refusal of Grant of Protection".

63. Following the comments of a number of delegations, and taking into account the suggestion of the Delegation of Algeria to revise the title of Chapter 4 so that it would read: "Declarations of Refusal of Protection, Optional Statements of Grant of Protection", the Chair invited the delegations to propose a revised wording for proposed new Rule 11*bis*.

64. The Delegation of Iran (Islamic Republic of) proposed the removal of the words "partial" and "either partially or totally" in paragraphs (2) and (3) of new Rule 11*bis*, as well as the deletion of paragraph (3)(b)(iii) of Rule 11*bis*.

65. The Delegation of Italy said that it had some concern about the removal of those specific words, given that a refusal could, in fact, be either total or partial.

66. The Chair indicated that that was also his understanding, and that including or omitting references to the notion of partial refusals would not change the legal situation, as the possibility of issuing partial refusals followed from other provisions of the Regulations. He nonetheless recognized that there might be another issue that had to be looked into as pointed out by the representative of INTA, namely whether all possible cases of partial refusal were indeed covered by Rule 9(2)(iv) because the provision referred to "only certain elements of the appellation of origin".

67. The Representative of INTA agreed that one should not look at the wording of new Rule 11*bis* in isolation from Rule 9. He wondered whether the very precise terms in Rule 9(2)(iv), namely "only certain elements of the appellation of origin", did in fact cater for situations such as those presented by the "*Pisco*" case.

68. Regarding the concomitant declaration of partial refusal together with the statement of partial grant of protection, he said that his understanding was that the only purpose of such concomitant statements was to allow for the issuance of a document positively stating what was protected, that the holder could present to, for example, customs authorities or any other relevant authority. He therefore assumed that such statement would be separate from the statement of partial refusal and if that was indeed the intention he suggested reflecting that in paragraph (2) of the proposed Rule.

69. The Delegation of Cuba stated that it shared the concerns voiced by other delegations as regards issuing simultaneous statements of grant of partial protection with declarations of partial refusal. The Delegation called for clarification of the text of paragraph (2) of Rule 11*bis* where the Spanish version stated "in as much as protection of the appellation of origin has not been refused". The Delegation indicated that such clarification appealed to it when assuming that that concerned a partial refusal. Perhaps in reality that concerned a total refusal in such cases and therefore the Delegation suggested elucidating that point.

70. The Delegation of Algeria proposed deleting the expression "preferably" from paragraph (2)(b)(ii) of the provision 11*bis* for greater accuracy.

71. In response to the proposal made by the Delegation of Algeria, the Chair cautioned that the word "preferably" also appeared in other Rules of the Regulations, and more particularly in Rule 9. He further indicated that his understanding of that expression had been that it added to the flexibility of the system and that deleting it would take away that flexibility.

72. The Delegation of France thanked the Chair for the clarifications given on the particularly difficult subject of partial refusals and of partial grant of protection. However, the Delegation had indicated that it had difficulty understanding how Rule 11*bis* could explicitly provide for a partial refusal without that having been defined beforehand in Rule 9, which precisely dealt with partial refusals.

73. The Chair said that the Delegation of France had identified two core issues, namely, the question as to what was exactly meant by partial refusal, and also whether the statements of grant of protection only should be issued when total protection was being granted. In that regard, the Chair also made reference to Article 4 of the Lisbon Agreement and to the modalities under which contracting countries could give effect to that provision.

74. Offering his preliminary conclusions, the Chair indicated that there seemed to be consensus on the fact that the introduction of statements of grant of protection would not only be in the interest of the users of the system, but would also contribute to legal certainty. However, such consensus appeared to be limited to the case where full protection of the appellation of origin was recognized. He added that there also seemed to be consensus on the optional character of the proposed system of grant of protection. He noted that all delegations appeared to agree with the suggestions of the Delegation of Algeria to the effect that the term "Optional Statements of Grant of Protection" would also be reflected in the title of Chapter 4 and new Rule 11*bis*. It also seemed that delegations were interested in looking into Rule 9, under Agenda Item 5 to determine whether participants would also agree on the inclusion of references to partial refusals or statements of partial grant of protection, which might imply reverting to Rule 11*bis* thereafter. If limited only to statements of full grant of protection, and only on an optional basis, the text of paragraph (2) of new Rule 11*bis* would disappear entirely and the wording of paragraph (3) of that Rule would be brought into full line with Rule 11.

75. The Chair requested the Secretariat to prepare a revised text of new Rule 11*bis*, taking the above into account without any prejudice to the outcome of discussions on Rule 9.

76. The Delegation of Peru stated that it could support the proposal made by the Chair as to the new version of Rule 11*bis*, provided that it were conditional on the result of the discussions on Rule 9. Not proceeding in such a manner would prejudice the discussions on the proposal for Rule 11*bis* by the Secretariat and the possible changes to Rule 9. In that respect, the Delegation stated that it could accept the Summary by the Chair of the Working Group.

77. Noting the concerns of the Delegation of Peru, the Chair confirmed that the proposal for a revised text of Rule 11*bis* would be without prejudice to the results of their discussions on Rule 9 and that following such discussions they would of course have to revert to Rule 11*bis*.

78. The Delegation of Italy agreed with the proposal to further discuss the wording of Rules 9, 11 and 11*bis*. Referring to the proposal made by the Delegation of Algeria, the Delegation also favored more flexibility and therefore disagreed with the proposal to cancel the word "preferably" that appeared in Rules 9, 11 and 11*bis*.

Administrative Instructions

79. Introducing the proposed new Rule 23*bis*, the Secretariat referred to the existing difficulties in establishing with certainty the exact date when national competent authorities had received notifications of new registrations. The Secretariat recalled that under the existing Regulations, the International Bureau was required to send such notifications by registered mail, or by any other means enabling the International Bureau to establish the date on which the notification had been received. In practice, the International Bureau was currently sending out notifications of new registrations by facsimile or, if that type of transmission was not possible or successful, by a delivery service. The importance of these procedures lay in the calculation of the time limit for the notification of a refusal, which started running on the date that a competent authority had received the notification of a new international registration.

80. In view of the considerably increased experience of the International Bureau with electronic communications in the context of the Madrid and Hague systems, the Secretariat had decided to submit the issue of establishing a procedure for electronic transmissions between the International Bureau and the national authorities to the Working Group. In this regard, the Secretariat pointed out that the methods of electronic communication continued to evolve and would therefore have to be adapted from time to time in the procedural rules. For that reason, the Secretariat was of the view that it would be preferable that the Regulations contained a set of Administrative Instructions that would explicitly lay out the procedure for electronic transmissions and that would provide a faster way for adapting the procedures to newly arising situations in the area of electronic communications. The Secretariat also noted that, once established, Administrative Instructions might also apply in the future to other elements, besides electronic communications. The Secretariat indicated that both under the Madrid and Hague systems, Administrative Instructions were a possible avenue for the Director General to establish rules for the application of specific procedures under the Agreement and its Regulations, in consultation with interested Member States.

81. The Delegation of Algeria noted that the aim of adopting Administrative Instructions was to introduce electronic communications. It added, however, that the system should remain flexible and attractive so that several countries could accede thereto. Lastly, the Delegation expressed its concern faced with the risk that the establishment of the procedure for electronic communication dissuaded future Members from acceding to the Lisbon system, in particular from among developing countries.

82. Moreover, the Delegation called on the International Bureau to take into consideration issues as diverse as the digital divide afflicting some developing countries, but also the questioned legal value of electronic communications, as well as the problems related to the authenticity of electronic signatures, before opting to introduce electronic notifications in the Regulations. The Delegation added that it recommended retaining the greatest flexibility and proposed that coexistence of the paper and electronic formats of notification be maintained.

83. The Delegation of Peru agreed with the fact that notifications should be sent electronically and also supported the proposal made by the Delegation of Algeria. However, it requested a clarification as to the drafting of Rule 23*bis* on the Administrative Instructions and called for it to be made clear that the Administrative Instructions only referred to notifications.

84. In response to the Delegations of Algeria and Peru, the Chair noted that the proposed text of new Rule 23*bis* followed the corresponding text of the provisions dealing with Administrative Instructions in the Common Regulations under both the Madrid and Hague systems. He further observed that paragraphs (1)(b) and (4) of Rule 23*bis* seemed to give some assurances to the Delegation of Peru, not to mention paragraph (2) which provided for control by the Assembly.

85. The Delegation of Cuba supported the proposal made by Algeria that notifications remained in paper form. Referring to the statement made by the Delegation of Peru, it also called for clarification of the scope of the Administrative Instructions of Rule 23*bis*. Lastly, it stated that letter (b) of paragraph (1) of Rule 23*bis* stated that specific reference should be made to those instructions in the Regulations and that therefore there would necessarily be an allusion thereto in another Rule and added that further, in paragraph 27 of document LI/WG/DEV/1/2 Rev., reference was also made to other amendments as a consequence of adopting Rule 11*bis*. Therefore the Delegation called for those amendments also to be examined by the Working Group.

86. The Delegation of France also stated that on reading Rule 23*bis* it had wondered whether in fact a complementary provision was missing, since Rule 23*bis* stated that the "Administrative Instructions shall deal with matters in respect of which these Regulations expressly refer to such Instructions". Consequently, the Delegation had wondered if Rule 22 should not also be amended so as to specify that it was within the context of notifications that it was possible to plan for other means of communication using the Administrative Instructions. That would in particular meet the concerns of Peru of seeing the use of Administrative Instructions include cases other than those for which they were initially foreseen.

87. Regarding paragraph (4) of Rule 23*bis*, the Delegation of Iran (Islamic Republic of) underlined that in case of conflict between the Agreement, Regulations, and Administrative Instructions, the Agreement would prevail.

88. Responding to the comment made by the Delegation of Iran (Islamic Republic of) with regard to paragraph (4) of the proposed new Rule, the Chair confirmed that the Agreement and the Regulations would always prevail.

89. Still on the same issue, the Delegation of Peru made reference to the text of the proposed new Rule in the Spanish version, the wording of which seemed to suggest that the same legal weight was given to the Lisbon Agreement and to the Regulations. The Delegation therefore suggested clarifying that the Regulations did not have the same legal importance as the Agreement itself.

90. The Delegation of Tunisia supported the proposal made by the Delegation of Algeria on the coexistence of the paper and electronic formats as regards notifications. It also called for clarification of the expression "by any other means" in Rule 22 so as to define whether that expression encompassed electronic communications or not.

91. The Delegation of Italy welcomed the proposal of using a system of electronic communications for the notifications to and from the International Bureau. For the purpose of notifications communicated electronically, the Delegation indicated that it would be interesting to know more in detail the Administrative Instructions for the amendment of Rule 22. The Delegation went on to say that the issuing of statements of grant of protection in the case of the Lisbon system as well would make the latter more similar to the Madrid and the Hague systems. However, the Delegation wished to underline that regarding the communications from the International Bureau related to the international trademark applications under the Madrid system, the Italian Patent and Trademark Office still received most of them on paper. The Delegation was therefore of the view that it would be useful to know more in detail what kind of communications Administrative Instructions under the Lisbon system would be dealing with and how the system would work.

92. In order to be able to take a decision, the Delegation of Algeria called on the Secretariat to provide statistics on the use of the MECA (Madrid Electronic CommunicAtions) system by developing countries.

93. The Secretariat responded to the comments and proposals that had been submitted by delegations, and confirmed that the means of communication by registered mail, facsimile and delivery service would remain available. Electronic communications, if and when introduced, would take place only with those competent authorities that had expressed an interest in such means of communication and would not be obligatory. The Secretariat also confirmed that the present document only proposed a system of electronic communications in respect of the communication of notifications of new registrations. The proposed system would allow the International Bureau to establish dates of receipt of such notifications more easily.

94. In response to the concerns expressed by the Delegation of Algeria, the Secretariat indicated that a number of African countries were actually receiving notifications under the Madrid system by electronic means, even though none of them was submitting notifications to the International Bureau by electronic means. The Secretariat went on to say that the number of countries was growing with the help of WIPO's information technology services.

95. Regarding the concerns expressed about the possible wide scope of the proposed Rule 23*bis*, the Secretariat recalled that the International Bureau had taken as a model the corresponding rules under the Madrid and Hague systems and that it had followed those faithfully. If delegations felt that the provisions could be improved, the Secretariat would be eager to consider and introduce any such improvements.

96. With regard to further precision of the text of the new Rule, the Secretariat said that what had been suggested in respect of the Spanish version of the text of paragraph (4) had been noted and that the text would be revised accordingly. Lastly, the Secretariat referred to the comments made by the Delegation of Cuba regarding the possible need for consequential amendments to the Regulations if Rule 11*bis* were adopted and confirmed that the issue would be considered by the International Bureau.

97. Regarding the comment made by the Delegation of France about Rule 22, the Secretariat referred to paragraph 33 of the document LI/WG/DEV/1/2 Rev. which stated that if Administrative Instructions were adopted, and would specifically deal with means of communication of notifications to competent authorities of Lisbon Member States, then Rule 22 had to be amended. Incidentally, Rule 22(1) stated that the International Bureau had to submit notifications to competent authorities "by registered mail with acknowledgment of receipt or by any other means enabling the International Bureau to establish the date on which notification was received". In the Secretariat's view, such provision would already allow the International Bureau to use electronic means of communication but of course it would not do so if the receiving end was not prepared to accept such notifications.

98. In response to a concern expressed by the Delegation of Italy regarding the actual scope of the Administrative Instructions, the Secretariat indicated that in that respect reference could certainly be made to the Administrative Instructions as they existed for the Madrid system and the Hague system.

99. Regarding paragraph (4) of the proposed Rule 23*bis*, the Secretariat clarified that the expression "the latter shall prevail" referred not to the Regulations but to "any provision of the Agreement". The Secretariat also admitted that the Spanish version of the Rule was not as clear as the English one, and suggested to replace the expression "*prevalecerán estos últimos*" by "*prevalecerá esta última*".

100. Referring to the subject of consequential amendments, the Delegation of Cuba stated that it understood that the subject of Rule 11*bis* had been postponed and that as a consequence paragraph 27 of document LI/WG/DEV/1/2 Rev. would be discussed in due time. However, concerning letter (b) of paragraph (1) of new Rule 23*bis* which made reference to "these Regulations expressly refer to such Instructions", what the Delegation was proposing therefore was that those Rules which required consequential amendment would also be considered by the Working Group.

101. In conclusion, the Chair said that the use of electronic means, although certainly preferable from a practical point of view, would not be forced on any contracting country. The use of such means would remain optional. Reference had been made to Administrative Instructions under the Hague and Madrid systems in this regard. As regards the issue of consequential amendments, he referred to the explanations given, that these might be necessitated by new Rule 11*bis* but perhaps also by new Rule 23*bis*. Furthermore, as pointed out by the International Bureau, Rule 22 as it stood was flexible and already provided for the possibility of using electronic means of communication. The Spanish version of paragraph (4) of proposed Rule 23*bis* would be slightly amended to follow more closely the English and the French versions. As regards the interpretation of that provision, the International Bureau had provided the necessary explanations.

*Revised Drafts for Proposed Rules 11*bis *and 23*bis

102. The Working Group then considered the revised draft of new Rule 11*bis*, as prepared by the International Bureau at the request of the Chair, along with an amendment of current Rule 22 and a revised version of the Spanish text of proposed new Rule 23*bis*(4).

103. Referring to the new suggested amendments to Chapter 4, the Secretariat enumerated in detail where such amendments had been made: the word "optional" had been inserted in the very title of Chapter 4 in relation to the statements of grant of protection as well as in the title of Rule 11*bis* itself to stress the fact that no competent authority would be under the obligation of issuing such statements; following consensus as to the issuing of statements of grant of protection, only in situations where total protection was granted to an appellation of origin, it was agreed that paragraph (2) of Rule 11*bis* establishing the possibility of concomitant statements of grant of protection would be removed altogether, which also meant that former paragraph (3) would now become paragraph (2) in the amended version; the Secretariat indicated that the words "either, partially or totally" had also been removed from paragraph (3)(a) of Rule 11*bis* and that under paragraph (3)(b) of Rule 11*bis* the former item (iii) dealing with the scope of protection had been equally deleted. What was formerly item (iv) had become item (iii), and the wording had also been revised to better mirror Rule 11(2)(ii) concerning the withdrawal of a refusal. The Secretariat pointed out that in essence the amended wording of paragraph (2) of new Rule 11*bis*, which provided for the possibility of issuing statements of grant of protection following a refusal, was nothing more than an alternative vehicle to the communication of a withdrawal of a refusal and better mirrored the wording of Rule 11 itself.

104. Regarding Chapter 6, and more particularly Rule 22, the Secretariat indicated that the words "as provided for in the Administrative Instructions" had been added at the very end of Rule 22(1). Paragraph (4) of Rule 23*bis* would now read, in the Spanish version, as follows:

> "*En caso de conflicto entre, por una parte, cualquier disposición de las Instrucciones Administrativas y, por otra, cualquier disposición del Arreglo del presente Reglamento prevalecerá esta última*."

105. The Delegation of Peru expressed some concern as regards the scope of the removal of the partial nature of the statement in Paragraph (2) of Rule 11*bis*. It mentioned the specific situation of "*Pisco*" in Peru and the partial refusals or partial acknowledgements regarding "*Pisco*". It wondered whether the removal of the partial acknowledgement in Rule 11*bis* would mean that existing partial acknowledgements of "*Pisco*", as well as future cases, would, in practice, have to be total refusals.

106. The Chair recalled that the possibility of issuing optional statements of grant of protection was to be without prejudice to the existing legal framework, including that concerning the issuing of partial refusals. If there was further concern in that regard, the Chair proposed that the matter be discussed at the same time as current Rule 9, under Agenda Item 5. The Chair also stated his belief that any change to the current rules would not have retroactive effect.

107. The Delegation of Peru called for a clarification from the Secretariat to determine whether the proposed amendments would be applied at a future date, which would then mean that in the future, partial refusals would no longer exist, an alarming prospect for the Delegation.

108. The Secretariat responded that if the proposed new Rule 11*bis* was intended to modify current Rules 9 and 11, this would have to be specified in Rules 9 and 11.

109. The Chair added that, consequently, partial refusals could therefore continue to be issued, as the current rules would continue to apply.

110. The Delegation of Costa Rica explained that it shared the last explanation of the Secretariat on an optional statement of grant of protection and stated that therefore what had been removed, with the deletion of paragraph (2) of Rule 11*bis*, was the ability, within a one-year period, to issue a partial acknowledgement or a partial refusal. It stated that that was a different subject to Rule 9 and Rule 11, where the Regulations established the possibility of issuing a partial refusal.

111. The Chair expressed its full support for what had been said by the Delegation of Costa Rica and recalled that the removal of paragraph (2) from the original text of the proposed new Rule 11*bis* would result in the simple elimination of the possibility of issuing partial refusals concomitantly with partial statements of grant of protection. In that regard, the Chair recalled the earlier discussions of the Working Group in the course of which a number of delegations had suggested that the concomitant issuing of partial refusals and partial statements of grant of protection might lead to a risk of contradiction between the two, and thereby to legal uncertainty.

112. The Delegation of Mexico underscored that the text of the Spanish version of paragraph (2) of Rule 11*bis* seemed to contain an inconsistency. It explained that the expression “instead of notifying a withdrawal of refusal the competent authority may issue a declaration of protection” suggested that that was an attempt to replace one procedure with another. However, according to the text of Paragraph (2)(b)(iii) of Rule 11*bis* the date on which the refusal had been withdrawn was required, which in turn implied that both procedures would continue to exist, the withdrawal of the refusal as well as the declaration of protection.

113. The Delegation of Georgia, referring to the proposed removal of paragraph (2) from the original text of proposed new Rule 11*bis*, pointed out that the possibility of issuing statements of grant of protection under new Rule 11*bis* was optional, and that included partial statements of grant of protection. Since such a statement would be useful for right holders, the Delegation was of the view that paragraph (2) should not be deleted. Nonetheless, in response to the Chair’s question , the Delegation said thtat it could go along with the revised text that had been prepared by the Secretariat.

114. The Delegation of France noted that the new version of Rule 11*bis* was exclusively devoted to total grants of protection and that partial grants of protection were still dealt with in the context of refusals under Rules 9 and 11. It stated that item (1) of Rule 11*bis* only dealt with the positive grant of protection so as to inform the holder of the request that he or she had been granted total protection. The Delegation added that item (2) of Rule 11*bis* was in line with a positive approach, in the sense that the Rule provided for the possibility of replacing the notification of a withdrawal of refusal with a statement of total grant of protection. The Delegation also mentioned that by removing the statement of partial grant of protection together with the statement of partial refusal of the old version of item (2) of Rule 11*bis*, the risk of an inconsistency between the two was real. It considered that that was a clarification in the text and invited the Working Group to discuss future improvements to the text.

115. The Delegation of Peru, referring to its previous statements on Rule 23*bis*, stated that the only reference to the Administrative Instructions seemed too broad and proposed including an explicit reference to the subject of notifications in Rule 23*bis*, with a sentence which linked the subject of Administrative Instructions. The Delegation added that it did not appear sufficient to add a sentence in Rule 22.

116. In response to the Delegation of Peru, the Secretariat recalled that proposed new Rule 23*bis* had been drafted following the corresponding provisions in the Common Regulations under both the Madrid and Hague systems. The proposal had been included at that point in time to allow for the establishment of Administrative Instructions that would deal with electronic communication of notifications. In the future, there might be other features for which Administrative Instructions could be established, such as, for example, the use of official forms. However, the Secretariat confirmed that if there was continuing concern that new Rule 23*bis*, as proposed, might be too broad, then its scope could be limited.

117. The Delegation of Italy queried what it should do in case it would prefer to have recorded in the International Register a positively stated partial grant of protection instead of a negatively stated partial refusal.

118. The Secretariat replied that, if a competent authority would issue a partial refusal and phrase it in a way that would make it look like a partial grant, the International Bureau would accept that, as it had done in the "*Pisco*" case.

119. The Delegation of Morocco referred to the statement by the Delegation of Mexico and wondered whether filing a statement of grant of protection following a refusal excluded the notification of a withdrawal of refusal, and if that were the case why did paragraph (2)(b)(iii) of Rule 11*bis* make reference to "the date on which the refusal of protection was withdrawn".

120. In response to the Delegation of Morocco, the Secretariat stated that the reference in paragraph (2)(b)(iii) of the revised text of new Rule 11*bis* to "the date on which the declaration of refusal was withdrawn" was to align that provision with current Rule 11, which provided in paragraph (2)(ii) for an indication of "the date on which the refusal of protection was withdrawn". A statement of grant of protection in such case could only arise following the withdrawal of a refusal and it was therefore necessary to have the date on which such withdrawal took place.

121. The Chair indicated that in the case of paragraph (2) the understanding was that withdrawal of a declaration of refusal took place as a result of sending a statement to the effect that protection had been granted to the appellation of origin and therefore the date on which the declaration of refusal had been withdrawn was to be indicated irrespective of the fact that that already resulted from the issuance of the statement of grant of protection. In that regard, he was therefore of the view that the language proposed by the International Bureau had to be kept under paragraph (2)(b)(iii) of Rule 11*bis*.

122. The Delegation of Mexico specifically referred to the statement it had made previously on paragraph 2 of Rule 11*bis*. It stated that it had difficulty understanding the first part of the text after letter (a) which stated "*en lugar de notificar el retiro de una declaración*" ("instead of notifying a withdrawal of refusal"). According to the Delegation, the Spanish "en lugar de" ("in place of") meant "en vez de" ("instead of"), i.e., that one was replaced by the other,

but it also pointed out, however, that the last part required the date of withdrawal of refusal, which implied that both procedures existed: firstly, refusal was withdrawn and secondly, protection could be granted. Therefore, the wording used did not seem very clear and consequently the Delegation asked whether the expression "*en lugar de*" ("instead of") could be replaced by another more appropriate expression, such as "*además de*" ("in addition to").

123. The Delegation of Iran (Islamic Republic of) said that it was its understanding that paragraph (2) opened a new alternative, namely that instead of notifying the withdrawal of a refusal it was now possible to issue a statement of grant of protection. If such interpretation was accurate, the Delegation was of the opinion that the Delegation of Mexico was correct in saying that item (iii) was not consistent, as reference was made to the date of the withdrawal of the refusal.

124. The Delegation of France stated that it shared the opinion expressed by many delegations in which the text of paragraph (2)(b)(iii) of Rule 11*bis* implied that it was still necessary to make two statements, i.e., a statement of grant of protection and a statement of withdrawal of refusal. The Delegation stated that, in fact, reference was still made to the "date on which the refusal was withdrawn", which suggested that it was still required to send a refusal to the International Bureau. That was why the Delegation had proposed an alternative text which would read "the date on which the State decided to withdraw its refusal" without referring to a statement for the International Bureau. There might be an internal decision which would translate only into a statement of grant of protection. The Delegation added that another possibility would be to return to the previous text of the above Rule, namely "the date on which the statement of grant of protection is issued". The Delegation considered that in that statement of grant of protection reference would necessarily be made to the time when the State had decided to withdraw its refusal. According to the Delegation, there had been confusion between the statement sent to the International Bureau and the State's decision. The Delegation also called on the Secretariat to clarify whether the statement of grant of protection would automatically lead to a cancellation by the International Bureau of the refusal in the Registry.

125. In response to these comments in relation to paragraph (2)(a) of Rule 11*bis*, the Secretariat said that, although the paragraph started indeed with a reference to Rule 11 by stating "instead of notifying a withdrawal of refusal", that wording referred to the notification of a withdrawal of refusal while item (iii) referred to the withdrawal itself. The Secretariat recalled that a withdrawal was the result of a decision to grant protection in a particular country. In other words, as a result of such grant of protection the country was in a position to withdraw a refusal and it did so by notifying a withdrawal of refusal. Instead of notifying a withdrawal of refusal, the country could also issue a statement of grant of protection and, if it did, perhaps, instead of the date on which the declaration of refusal was withdrawn, the date "on which protection was granted" would be a more adequate wording. In response to the Delegation of France, the Secretariat suggested to add in paragraph (3) that the International Bureau would strike from the International Register the refusal issued previously.

126. The Chair indicated that his understanding was that indeed the International Bureau would have to strike references to those declarations of refusal from the International Register upon receipt of a statement of grant of protectionand suggested that the text be further revised for the sake of clarity.

127. In light of the various concerns expressed by delegations regarding paragraph (2)(b)(iii) of new Rule 11*bis*, the Secretariat prepared and presented to the Working Group a further revision of the text of that provision both in paragraph (2)(a) and (3)(b)(iii) of Rule 11*bis*. The text read as follows:

"*Rule 11bis*
"*Optional Statements of Grant of Protection*

[…]

"(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."

128. The Delegation of Peru indicated that it could accept the proposal made by the Secretariat. However, it expressed its concern regarding the deletion of the expression "either partially or totally" from Rule 11*bis* and requested a clarification on maintaining it in Rule 11.

129. In response to the concerns expressed by the Delegation of Peru, the Chair confirmed that the deletion in the fourth line of paragraph (2)(a) of the reference to "either partially or totally" did not mean that such possibility had been eliminated from Rule 11.

130. The Delegation of Cuba asked for clarification on the positive statement of grant of protection and wondered whether such statement could be partial or total since it would be issued instead of a withdrawal of a declaration of refusal pursuant to the current Rule 11(1), which could be partial or total.

131. In response, the Chair affirmed that the new text was not intended to affect the current situation under Rule 11 as it stood. If a partial refusal had been issued by the competent authority and that partial refusal had subsequently been withdrawn, then it would be possible under paragraph (2)(b)(ii) to send a statement of full grant of protection, as that would in fact be the granting of full protection.

132. The Secretariat said that it was its understanding that the Delegation of Cuba was asking clarification of the fact that there was a reference to Rule 11(1) in the new draft, which allowed for a total or a partial withdrawal of a refusal. As it currently reads, therefore, new Rule 11*bis* would allow for statements of total or partial grant of protection, stating that instead of a withdrawal of refusal in accordance with Rule 11(1) the country could issue a statement of grant of protection. In line with Rule 11(1), such statement could concern a total grant or a partial grant.

133. The Delegation of Iran (Islamic Republic of) indicated that its understanding was that new Rule 11*bis* would come after the existing Rule 11 which stated that "the declaration of refusal may be withdrawn in part or in whole at any time". The Delegation was of the view that paragraph (2) of new Rule 11*bis* would not have any effect on the procedure provided for under current Rule 11 and that it merely elaborated upon how a refusal might be withdrawn.

134. In response to a query from the Delegation of Italy the Chair reiterated that current Rule 11(1) provided for the possibility of a partial withdrawal of a refusal and so would the sending of a statement of partial grant of protection be provided under paragraph (2) of new Rule 11*bis*. He added that, if this did not reflect the intent of the Working Group, the text would have to be reconsidered.

135. The Chair noted that the Working Group had thus reached agreement on the text of proposed new Rule 11*bis* and, following a query from the Delegation of Iran (Islamic Republic of), confirmed that the Working Group would not revert to Rule 11*bis*, unless the discussion under Agenda item 5 would so require.

Agenda Item 5: Other Matters

136. The Chair requested the Secretariat to introduce Annex II of document LI/WG/DEV/1/2/Rev. At the same time, he indicated, with reference to the opening statement made by Assistant Director General Mr. Rubio, that, in the course of the discussions under Agenda Item 5, delegations would be free to raise any other matter as well.

137. The Secretariat said that Annex II of the working document for the present session of the Working Group provided a general overview of the Lisbon system. This had been considered necessary, as the understanding of the Lisbon system around the world appeared to deviate, on a number of aspects, from the original intent of the negotiators of the Agreement in 1958. In consequence, the Annex contained a number of references in its footnotes to the Acts of the Diplomatic Conference in Lisbon in 1958 that had adopted the Agreement.

138. Turning to the Section of this general overview entitled "Recognition and protection in the country of origin", the Secretariat pointed out that, according to its reading of the Acts of the Lisbon Conference in 1958, the provisions of Article 1(2), Article 2(1) and Article 2(2) of the Lisbon Agreement had to be read in conjunction with each other. Article 1(2) stipulated that, in order to qualify for registration under the Lisbon Agreement, an appellation of origin had to be recognized and protected in the country of origin. In that respect, there were four notions that needed to be defined: the notion of appellation of origin, the notion of recognition, the notion of protection and the notion of country of origin.

139. Continuing, the Secretariat said that the notion of appellation of origin was defined in Article 2(1), which stipulated that an appellation of origin must be 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. The Secretariat highlighted two terms contained in this definition which required clarification, namely the term "geographical denomination" and the term "the quality or characteristics". The term "geographical denomination" was used instead of "geographical name", because in the past the notion of "geographical name", which featured in the English translation of the Lisbon Agreement, had been interpreted rather restrictively when interpreting the Lisbon Agreement, in the sense that it had to be a really concrete geographical name and could not be a name which indirectly related to a particular region or area. The French text, which was the only authentic text of the Agreement, did not speak of "*nom*" (name) but of "*dénomination*" (denomination), which arguably was broader. The term "the quality *or* characteristics" was used as it mirrored the term "*la qualité* ou *les caractères*" in the authentic French text. In this regard, it should be noted that the English text of the Lisbon Agreement published by WIPO contained an error, as it stated "the quality *and* characteristics", which would be corrected at the next reprint.

140. As to the notions "recognized" and "protected", the Secretariat indicated that these had been explained over the years as basically meaning the same thing. "Recognized" would relate to the act of recognizing the appellation of origin and "protected" would relate to the recognition as stipulated in the resulting legal instrument. However, the Acts of the Lisbon Conference in 1958 specified, as mentioned in footnote 2 of the general overview of the Lisbon system as contained in Annex II of document LI/WG/DEV/1/2 Rev., that Article 1(2) had been approved only after the term "recognized" had been added before the words "protected as such" and that such amendment had been considered necessary by the negotiators in order to bring the provision into line with the principle that appellations of origin always related to a product enjoying a certain notoriety. Consequently, the term "recognized" should be seen in conjunction with the definition of "country of origin" in Article 2(2), which contained the term "reputation" ("*notoriété*" in the authentic French text) as a basic element.

141. In other words, in respect of these four notions, there did not seem to be such a big difference between the TRIPS definition for geographical indications and the subject matter to be protected under the Lisbon Agreement. The biggest difference between the two probably lay in the required qualitative connection between the product and the place in which the product originated. Under the Lisbon definition for "appellation of origin", such qualitative connection had to be based on the geographical environment of the area in which the product was produced, whereas the TRIPS definition was not so specific in that regard and only spoke of the "origin" as determining factor.

142. The Secretariat went on to say that the next Section of the general overview dealt with the protection to be accorded. In this regard, the level of protection that had to be provided to appellations of origin, at a minimum, under the Lisbon Agreement, was specified in Article 3, which stipulated that appellations of origin registered under the Lisbon Agreement had to be protected "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". The Secretariat pointed out that such protection would seem to correspond to the higher level of protection to be provided

under the TRIPS Agreement in respect of geographical indications for wines and spirits, but under the Lisbon Agreement such type of protection had to be available for appellations of origin in respect of all kinds of products. The Lisbon Agreement did not limit the categories of products that could be the subject of appellations of origin under the Agreement. The Secretariat also indicated that the terms "usurpation" and "imitation" were not defined in the Lisbon Agreement, but noted that the term "usurpation", as explained in the Acts of the Lisbon Conference in 1958, would seem to relate to any "use of the appellation in relation to products of the same kind".

143. As regards the next Section of the general overview of the Lisbon system (Annex II of document LI/WG/DEV/1/2 Rev.), dealing with the effects of international registration, the Secretariat pointed to the footnote attached to the heading of the Section, which referred to the Acts of the Lisbon Conference in 1958 so as to explain that the purpose of international registration was, firstly, to provide the other countries of the Lisbon system with precise information regarding the appellation of origin to be protected. A second purpose was to prompt position-taking by such countries with regard to the appellation of origin within one year from the date of receipt of newly registered appellations of origin. And a third aim was to shield appellations of origin against becoming generic denominations and limit exceptions to this principle to a minimum.

144. The Secretariat went on to say that international registration was followed by a one-year period within which countries could refuse protection, in part or in whole, for a newly registered appellation of origin in their territory and that such refusals had to meet two requirements, namely, apart form the time requirement of one year, also a content requirement, as the grounds for refusal had to be specified. In that respect, the Acts of the Lisbon Conference in 1958 stated that "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 Secretariat said that many different grounds had been advanced over the years, as shown by the statistics that WIPO had published in the Bulletin No. 37 *Appellations of Origin*. If a country had initially refused but later on found out that the refusal could be withdrawn in whole or in part, there was a procedure for doing so. If a country had not notified a declaration of refusal, then there was a provision under Article 5(6) of the Agreement which stipulated that prior use had to be terminated and that the country had the right to postpone the elimination of that prior use until two years after the refusal period had ended, at the latest. That provision only appeared to apply at that point in time. Indeed, if a country had notified a declaration of refusal, Article 5(6), and the corresponding Rule 12, according to their wording, would not appear to have application any longer. Once a refusal had been issued, as indicated in the Acts of the Diplomatic Conference in 1958, the grounds of refusal constituted a possible basis for discussion for the purpose of reaching any kind of understanding. Finally, if a country had not notified a declaration of refusal, or if it had withdrawn such a refusal, but subsequently a court in that country had invalidated the effects of the international registration in question, then the country was required to notify the International Bureau of that fact, once the invalidation had become final.

145. The Secretariat further indicated that procedures for the notification and recording of amendments to international registrations were also available under the Regulations under the Lisbon Agreement, which specified such procedures, in particular, in respect of changes in the identity of the holders of the right to use the appellation of origin; changes in the names or

addresses of holders; changes in the limits of the area of production of the products to which the appellation applied; changes in the legislative or administrative basis for protection; and changes in the status of the country itself, for example if a given country was split in two and, consequently, one of the two would be the new country of origin of a particular appellation of origin that had been registered originally in the name of the country that had been split in two.

146. Finally, The Secretariat said that all international registrations could be consulted on the WIPO website through the Lisbon Express database. In particular, detailed information concerning registered appellations of origin that were still in force could be accessed, such as the identity of the holders of the right to use the appellation of origin or the products to which the appellation of origin related, but also, for example, any refusals that had been issued.

147. The Delegation of Iran (Islamic Republic of) recalled that the Lisbon Agreement was 50 years old and that any move to amend it should be studied with caution. The Delegation made reference to paragraph 1 of document LI/WG/DEV/1/2 Rev., where it was stated that the Lisbon Union Assembly had decided to establish a working group responsible for exploring possible improvements to the procedures under the Lisbon Agreement. Consequently, the Working Group should focus on improvements that would facilitate operations under the procedures of the Lisbon system. However, if substantive issues would come up in that context, the Working Group could, in the view of the Delegation also examine such issues and report, after careful study, on these to the Assembly.

148. The Chair said that Annex II of document LI/WG/DEV/1/2 Rev., which had been introduced by the Secretariat, was not a formal agenda item. However, it was a useful document for the Working Group to identify areas of further work, for which the Working Group might recommend to the Assembly an extension of its mandate.

149. The Delegation of Egypt said that there was a lot of similarity between appellations of origin, geographical indications and trademarks and noted, in that connection, that the notion of reputation was part of the definition of “country of origin” under Article 2(2) of the Lisbon Agreement. The Delegation wondered whether a Lisbon Union member country was entitled to refuse an appellation of origin registered under the Lisbon Agreement, if it was protected in the country of origin as a registered geographical indication or as a registered trademark. The Delegation also had a question concerning Article 5(6) of the Lisbon Agreement, as the prior use referred to in that provision might take place under a previously registered trademark. Did Article 5(6) require Lisbon Union member countries to limit the acquired rights for using such registered trademark?

150. The Representative of MARQUES expressed the concern of his Organization for legal certainty in trade and drew the attention of the Working Group to the importance of considering carefully the compatibility of the European Union Regulations on geographical indications with the possible grant of protection to geographical indications through the Lisbon system in European Union Member States. The Representative queried in what way the existing European Union Regulations or bilateral agreements might affect such grant of protection.

151. The Representative of OriGIn said that, if Article 5(6) of the Lisbon Agreement and Rule 12 of the Lisbon Regulations had to be interpreted as indicated by the Secretariat, the Working Group might wish to explore, for the benefit of legal certainty and the predictability of the rule of law, whether Article (5)(6) should not be interpreted as also applying in the case of the withdrawal of a declaration of refusal, and to propose an amendment of Rule 12 accordingly.

152. The Delegation of France recalled that the Lisbon Agreement was 50 years old and that, for that reason, it was a propitious time to reflect on the future of the Agreement. It stated that the Agreement was of particular interest because it was a protection system that fostered adding value to products. Nevertheless, it had noted that the number of Member States was still limited and showed interest in extending the geographical influence of the Agreement. The Delegation indicated that, as regards that influence, making the Agreement more attractive was a major international challenge. It added that the work of the Working Group should be to know how and in what conditions the Lisbon Agreement could be made more attractive as a tool for promotion in a greater number of countries.

153. The Delegation also proposed planning for the possibility of allowing international organizations to accede to the Agreement and suggested a re-assessment of the phasing out period of two years (Article 5 (6) of the Agreement), which it considered relatively short to re-adapt markets and users. The Delegation added, however, that the introduction of certain flexibilities into the Agreement should be handled with care so as not to impact its sound operation adversely.

154. The Delegation of Hungary was of the view that Annex II of document LI/WG/DEV/1/2 Rev. should be submitted to the Lisbon Union Assembly and should also be distributed as widely as possible. Regarding possible areas of future work by the Working Group, the Delegation said that it would be useful to explore the relationship between the Lisbon system and regional protection systems for geographical indications. In the Delegation's view, the possibility of opening up the Lisbon system to intergovernmental organizations having competence in the field of geographical indications would also be worthy of consideration. Finally, the Delegation stated that the Working Group should continue its discussions with a view to introducing any improvements to the system that would bring about a widening of the geographical scope of the system's membership.

155. The Delegation of Peru raised two matters it considered important, as they could make the system more attractive and more efficient. It considered that the Working Group should continue its work and call on the Secretariat to draft an indicative, but not exhaustive, list of the issues linked to possible improvements in various aspects. It raised the issue, for instance, of membership and the possibility of introducing a dispute settlement mechanism. The Working Group could therefore study such list in an open and commitment-free manner at a possible future meeting. Further, the Delegation suggested that the Secretariat should carry out a survey among contracting countries and other interested circles so as to define the issues which might be of interest to the Working Group.

156. Additionally, it recalled that it was particularly important for the enlargement of the future membership of the Lisbon Agreement to continue to be promoted. It added that the protection of appellations of origin added value to products and that consumers were willing to pay more for the guarantee that an appellation of origin represented. In such a way, consumers felt reassured having a quality product for which they were willing to pay more.

157. The Delegation of Bulgaria, commenting on Annex II of document LI/WG/DEV/1/2 Rev., said that, in its view, an explanation was missing in paragraphs 5 and 6 as to who were actually using the Agreement and why, i.e. as to the value-added that the protection of appellations of origin under the Agreement might bring to users. The Delegation suggested that there be an analysis or a study, in cooperation with the contracting countries, in order to understand who were actually using the Agreement and to identify what possible changes they would wish to see in the Agreement. Thus, it could be ascertained whether the users of the system were satisfied or not and what obstacles existed for those who wished to protect an appellation of origin and promote the product in question in a country that was currently not a contracting country. The Delegation, therefore, encouraged the International Bureau to undertake not only a study or survey on legal procedures, but also to understand the practical use of the system from a commercial point of view and how the system, in this respect, could be improved.

158. The Secretariat then read to the Working Group a letter that had been received from the Director general of the African Intellectual Property Organization (OAPI), underlining the importance of the protection of geographical indications and expressing the Organization's support for the initiative to explore improvements of the Lisbon system with a view to a widening of its membership, as well as its interest in the creation of a possibility for intergovernmental organizations with registration systems for appellations of origin to acceed to the Lisbon Agreement. A copy of this letter is contained in Annex II to this report.

159. The Delegation of Italy raised a question concerning the scope of protection under Article 3 of the Lisbon Agreement, wondering whether "evocation" was covered by this provision. He said that protection against evocation of an appellation of origin was covered by an increasing number of national legislations.

160. As to the question from the Delegation of Egypt concerning the relationship between appellations of origin and trademarks, and more particularly whether an appellation of origin could be protected by virtue of a Lisbon registration on the basis of its protection in the country of origin as a certification mark or a collective mark and, if so, whether protection of such an appellation of origin could be refused on that basis by other countries of the Lisbon system, the Secretariat referred to paragraph 8 of the general overview of the Lisbon system as contained in Annex II of document LI/WG/DEV/1/2 Rev. As stated there, "the protection of the appellation of origin must have been formalized by means of legislative provisions, administrative provisions, a judicial decision or any form of registration" in the country of origin. The Secretariat pointed out that those four options were mentioned in Rule 5 of the Lisbon Regulations, but also in the Acts of the Lisbon Conference in 1958 as the possible legal basis for protection of the appellation of origin in the country of origin. More particularly, the phrase "or any form of registration" could be interpreted as allowing, *inter alia*, registration as a certification mark or a collective mark. However, this could, of course, only be so if the product in respect of which the certification mark or the collective mark had been registered met the definition of appellation of origin in Article 2(1) and that of country of origin in Article 2(2) of the Lisbon Agreement. In the view of the Secretariat, if the product did not meet that definition, other countries of the Lisbon system would be in a position to refuse to protect the international registration in question, but they would not be entitled to refuse protection merely on the basis that the appellation of origin was protected in the country of origin as a certification mark or a collective mark.

161. Referring to the comments made by the Representative of OriGIn concerning Article 5(6) of the Lisbon Agreement, the Secretariat indicated that its understanding was that that provision only applied in case no refusal was notified and not in case of the withdrawal of a refusal. This view was based on the fact that Article 5(6) itself, as well as Rule 12 of the Lisbon Regulations, laid down a procedure for notification at the end of the one-year period in which a refusal could be issued and specified that the two-year period for phasing out prior uses of the denomination concerned in a given country that did not refuse to protect the international registration in question would have to start at the end of that one-year period and had to be notified to the International Bureau within three months after the end of the one-year period.

162. Continuing, the Secretariat said that it was, of course, a question of interpretation whether or not Member States were also bound to eliminate prior use in case of the withdrawal of a refusal within two years from the date of such a withdrawal. Although this question had never arisen in practice under the procedures of the Lisbon system, the Secretariat had once been asked by a Member State for its understanding in this regard, as the Member State in question was, at that time, preparing the withdrawal of a refusal and was wondering whether it could grant a period to prior users that was longer than two years from the date of the withdrawal. After ample consideration, the Secretariat had indicated to the Member State in question that it was its understanding that, in case of the withdrawal of a refusal, a longer period was allowed. In this respect, the Secretariat referred to paragraph 18 of the general overview of the Lisbon system contained in Annex II of document LI/WG/DEV/1/2 Rev. and said that such a longer period might be the result of an understanding reached between the country of origin and the country that had notified the refusal. If a longer period would not be allowed in the given situation, the country that had refused would simply wait until the longer period had passed before withdrawing the refusal. The Secretariat was of the view that this would not be in the interest of right holders, nor of the Lisbon system. Allowing a longer transitional period in the case of the withdrawal of a refusal would, after all, have the advantage that during the transitional period the international registration would benefit from protection against other third parties.

163. In this connection, the Secretariat, however, also drew the attention to the suggestion made by the Delegation of France that the length of the two-year period referred to in Article 5(6) might be reconsidered during the course of the future discussions of the Working Group.

164. Regarding the query raised by the Delegation of Italy concerning Article 3 of the Lisbon Agreement and the issue of evocation, the Secretariat recalled that the concepts of usurpation and imitation under Article 3 were not defined in the Lisbon Agreement and that it was therefore up to national legislations to decide what such terms covered or not, which could differ from country to country. In that regard, the Secretariat indicated that it could be useful in the future to have a survey on how countries provided protection to appellations of origin. The Secretariat indicated that “evocation” might be covered by “usurpation”, but that there was no definitive answer on that point for the time being. However, to the extent that national laws provided more elaborate protection than against usurpation in the strict sense, then protection against evocation might be available in a number of countries of the Lisbon system.

165. The Chair concluded that the Working Group had given ample guidance to the International Bureau and to the Assembly of the Lisbon Union for further work and that there was a clear consensus that the work embarked upon should continue, in particular as there was a need to look for improvements of the Lisbon system, which would make the system more attractive for States and users. He believed that there also was consensus for such further work to take the contents of the general overview of the Lisbon system as contained in Annex II of document LI/WG/DEV/1/2 Rev. into consideration; for the International Bureau to conduct a survey with a view to ascertaining how the Lisbon system might be improved, in order that the system would become more attractive for users and prospective new members of the Lisbon Agreement; and for the International Bureau to also conduct a study on the relationship between regional systems for the protection of geographical indications and the Lisbon system, and to examine the conditions for, and the possibility of, future accession to the Lisbon Agreement by intergovernmental organizations.

166. The Delegation of Serbia said that, in connection with Annex II of document LI/WG/DEV/1/2 Rev., it would like to see a recommendation for future work added to the conclusions of the Chair, as the Delegation would favor a more in-depth discussion on the issue of grounds for refusal at the next session of the Working Group. At the same time, the length of the refusal period under Article 5 of the Lisbon Agreement could be discussed. Given the low number of registrations effected under the Lisbon system, a much shorter period than one year for the notification of refusal declarations was justified and in the interest of consumers and users of the system.

167. The Chair said that the one-year period was the maximum period allowed and that a contracting country could notify a refusal, or in the future a statement of grant of protection, any time before the expiry of that period.

168. The Delegation of Iran (Islamic Republic of) said that, as reflected in paragraph 1 of document LI/WG/DEV/1/2 Rev., the mandate of the Working Group was limited to exploring possible improvements to the procedures under the Lisbon system. Annex II of that document, as well as the survey and the study mentioned by the Chair, only served as background information for the Working Group.

169. The Chair said that the Working Group had been working within the limits of the mandate it had received from the Lisbon Union Assembly and observed that, by its nature, a study could only be informative and not decisive.

170. In response to a query from the Delegation of Iran (Islamic republic of), the Chair said that examination of the question of the possible accession by intergovernmental organizations to the Lisbon Agreement had been suggested by the Delegations of France and Hungary, while the matter had also been raised in the letter that had been received from the Director General of OAPI and which had been read out to the Working Group.

171. The Delegation of Peru stated that it was understood that the Working Group would communicate to the next session of the Assembly any agreement on amending provisions of the Regulations. To that end, the Delegation indicated that it was under the impression that there had been no calls for a new mandate of the Assembly other than that it would pursue its work the same. The Delegation requested clarification in that regard.

172. The Representative of INTA said that the practical experience of members of INTA showed that a one-year period for the notification of a refusal declaration had to be available at the very minimum, in particular in view of the difficulties that interested parties could be faced with in order to find out about the applicable procedures for raising objections in member countries.

173. The Delegation of Chile shared the opinion of the Representative of INTA as it had had direct experience of the arduous task of opposing an application for just one geographical indication, and believed that the specific case of Chile as a third party non-Member of the Lisbon Union was obvious and that the nine notifications of partial refusals concerning the appellation of origin "*Pisco*" had arrived in the last days of the one-year period of Article 5(3), despite the fact that for Chile this was a clear-cut case of pre-existing rights. Consequently, the Delegation considered that the time limit of one year was a prudent and reasonable period not only for those who had recently acceded to the Lisbon Union but also for third country, non-Members of the Lisbon Union.

174. Lastly the Delegation called for a clarification as regards the mandate of the Working Group. It asked whether the current mandate or that which would be sought at the next session of the Assembly would be to study and amend only the Regulations or whether it also included the substantive provisions of the Lisbon Agreement, such as Article 3 or Article 5(6).

175. The Chair said that, under its current mandate, the Working Group had started exploring possible improvements to the procedures under the Lisbon system. However, from the discussions held, it could be concluded that this mandate had to be extended, as delegations actually were asking that the Working Group would explore possible improvements to the system as a whole. He concluded, therefore, that a recommendation would be submitted to the Assembly specifying that the Working Group would be mandated to continue its work with a view to exploring possible improvements to the Lisbon system which would make the system more attractive for States and users.

Agenda Item 6: Adoption of the Summary by the Chair

176. The Chair said that a draft for the Summary by the Chair was contained in document LI/WG/DEV/1/3 Prov. As pointed out under item 23 of this document, a draft of the full report of the session of the Working Group would be distributed for comments among the delegations and representatives that had participated. Any such comments could be submitted within two months from the distribution date of that draft report, after which the draft report would be amended, as required, and made available to delegations on the WIPO website, for its adoption in due course. He added that the expression "in due course" meant at the next session of the Working Group.

177. The Delegation of Iran (Islamic Republic of) said that the exact mandate of the Working Group was better reflected in document LI/WG/DEV/1/2 Rev. and suggested to change paragraph 1 of the draft Summary by the Chair accordingly, so that it would read: "the Working Group responsible for exploring possible improvements to the procedures under the Lisbon Agreement".

178. In response to comments made by the Delegations of Algeria, Iran (Islamic Republic of), Italy, Peru and Tunisia, the Chair said that "consequential amendments" were amendments that would be required as a result of the new provisions of Rules 11*bis* and 23*bis*. For example, the title of Rule 17(3) currently reads "Application of Rules 9 to 11", but should, following adoption of new Rule 11*bis* read "Application of Rules 9 to 11*bis*". Similarly, the last sentence of Rule 17 – which currently reads "Rules 9 to 11 shall apply *mutatis mutandis*" – should then be amended so as to read "Rules 9 to 11*bis*". In order to better reflect this meaning, the wording of paragraph 19 of the draft Summary by the Chair would be amended in this respect, so as to read "along with any further consequential amendments that are necessary for the implementation of new Rule 11*bis* and 23*bis*".

179. Following comments from the Delegations of Bulgaria, Iran (Islamic Republic of), Italy and Peru, the Chair proposed that the phrase "while preserving the principles and objectives of the Lisbon Agreement" be added to the text of paragraph 20 of the draft Summary by the Chair and concluded that paragraph 20 thus revised was acceptable to delegations.

180. Following comments from the Delegations of Algeria, Australia, Bulgaria, Iran (Islamic Republic of), Italy and Peru on paragraph 21(a) of the draft Summary by the Chair, the Chair proposed a revised draft for this subparagraph and concluded that the following formulation for this subparagraph was acceptable to delegations: "that Annex II of document LI/WG/DEV/1/2 Rev. be submitted to the Assembly of the Lisbon Union at its session in September 2009, with the recommendation that the Assembly mandate the Working Group to further consider the general overview of the Lisbon system contained therein".

181. In response to a query from the Delegation of Bulgaria regarding paragraph 21(b), the Chair said that the results of the survey would be first presented to the Working Group and, in due course, after consultations and discussions in the Working Group, to the Assembly.

182. In response to a query from the Delegation of Iran (Islamic Republic of) regarding the same subparagraph, the Chair recalled that it had been explicitly agreed that the purpose of the study would be to look for improvements which would contribute to making the system more attractive.

183. Following comments from the Delegations of Costa Rica, France, Iran (Islamic Republic of) and Italy, the Chair proposed the following revised draft of subparagraph 21(b): "that the International Bureau conduct a survey among contracting countries of the Lisbon Agreement, States non-members of the Lisbon system, interested intergovernmental and non-governmental organizations and interested circles, with a view to ascertaining how the Lisbon system might be improved, in order that the system would become more attractive for users and prospective new members of the Lisbon Agreement while preserving the principles and objectives of the Agreement". He concluded that this formulation of the subparagraph was acceptable to delegations.

184. In response to a query form the Delegation of Italy, the Chair clarified that the expression "interested circles" could refer to right holders under the Lisbon system.

185. Regarding paragraph 21(c) of the draft Summary by the Chair, the Delegation of Iran (Islamic Republic of) suggested that this subparagraph might be reformulated so as to read: "that the International Bureau conduct a study on the possibility of future accession to the Lisbon Agreement by intergovernmental organizations".

186. The Delegation of Bulgaria said that thus amended an important part of the gist of the subparagraph would be lost. It was not only important to study what would be necessary for intergovernmental organizations to formally accede to the Lisbon Agreement, but also what would be required substantively for an intergovernmental organization that administered a regional system for the protection of geographical indications to be able to accede to the Lisbon Agreement.

187. In response to a query from the Delegation of Italy, the Chair said that it seemed logical that the International Bureau would conduct such study in cooperation with the competent intergovernmental organizations, and that it would depend on the internal rules of the intergovernmental organization in question to determine who would represent the organization in such consultations and whether its Member States were to be involved in the discussions or not.

188. The Delegation of France wished to express its support for the paragraph in question as it had been drafted with the amendment introduced by Italy. That concerned a point that the Delegation of France had raised during the Working Group discussions, and had indicated that the proposed wording corresponded exactly to that indicated by the Chair during his verbal conclusions. Therefore, the Delegation of France had indicated that it was completely satisfied with the proposed text.

189. As a compromise, the Chair proposed the following revised draft of subparagraph 21(c): "that the International Bureau conduct a study on the relationship between regional systems for the protection of geographical indications and the Lisbon system, and examine the conditions for, and the possibility of, future accessions to the Lisbon Agreement by competent intergovernmental organizations". He concluded that this formulation was acceptable to delegations.

190. In response to questions from the Delegations of Australia and Chile, the Chair said that the text of subparagraph 21(c) was referring to regional systems for the protection of geographical indications. Delegations which so wished could address questions concerning the relationship between the TRIPS Agreement and the Lisbon Agreement in the context of the survey that the International Bureau would initiate under paragraph 21(b).

191. Referring to paragraph 21(d) of the draft Summary by the Chair, the Delegation of Iran (Islamic Republic of) said that the mandate of the Working Group was currently limited to exploring possible improvements to the procedures under the Lisbon Agreement.

192. The Chair recalled that the Working Group had agreed to continue its work and extend it to any issues that would be identified as a result of the survey and the study that were foreseen under paragraphs 21(b) and 21(c), if approved by the Assembly, as the Delegation of Iran (Islamic Republic of) had correctly pointed out. Therefore, he proposed the following redraft of paragraph 21(d): "that the Assembly of the Lisbon Union be recommended to request the Director General to convene further meetings of the Working Group with a view to exploring further possible improvements to the procedures under the Lisbon Agreement and considering the results of the survey and the study contemplated under subparagraphs (b) and (c) above". He concluded that this formulation was acceptable to delegations.

193. The Working Group took note of the statements made and adopted the revised draft of the Summary by the Chair, as reproduced in Annex I to the present document.

Agenda Item 7: Closing of the Session

194. The Chair closed the session on March 20, 2009.

[Annexes follow]

ANNEX I

E

WIPO

LI/WG/DEV/1/3.
ORIGINAL: English
DATE: March 20, 2009

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

WORKING GROUP ON THE DEVELOPMENT OF THE LISBON SYSTEM (APPELLATIONS OF ORIGIN)

First Session
Geneva, March 17 to 20, 2009

SUMMARY BY THE CHAIR

approved by the Working Group

1. The Working Group responsible for exploring possible improvements to the procedures under the Lisbon Agreement met in Geneva from March 17 to 20, 2009.

2. The following Contracting Parties of the Lisbon Union were represented at the session: Algeria, Bulgaria, Costa Rica, Cuba, Czech Republic, Democratic People's Republic of Korea, France, Georgia, Hungary, Iran (Islamic Republic of), Italy, Mexico, Montenegro, Peru, Portugal, Republic of Moldova, Serbia, Slovakia, Togo, Tunisia (20).

3. The following States were represented as observers: Argentina, Australia, Bosnia and Herzegovina, Brazil, Canada, Chile, China, Egypt, Germany, Guatemala, Iraq, Japan, Lithuania, Morocco, Qatar, Romania, Spain, Sudan, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Turkey, United Kingdom, United States of America (24).

4. The Permanent Observer Mission of Palestine took part in the meeting in an observer capacity.

5. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: European Communities (EC), World Trade Organization (WTO) (2).

6. Representatives of the following international non-governmental organizations (NGOs) took part in the session in an observer capacity: Brazilian Intellectual Property Association (ABPI), European Communities Trade Mark Association (ECTA), International Trademark Association (INTA), MARQUES (Association of European Trademark Owners), Organization for an International Geographical Indications Network (OriGIn) (5).

7. The list of participants is contained in document LI/WG/DEV/1/INF/1.

Agenda Item 1: Opening of the session

8. Mr. Ernesto Rubio, Assistant Director General, opened the session, recalled the mandate of the Working Group and introduced the draft agenda, as contained in document LI/WG/DEV/1/1 Prov.

Agenda Item 2: Election of a Chair and two Vice-Chairs

9. Mr. Mihály Zoltán Ficsor (Hungary) was unanimously elected as Chair of the Working Group, and Mr. Randall Salazar Solórzano (Costa Rica) and Mr. Belkacem Ziani (Algeria) were elected as Vice-Chairs.

10. Mr. Matthijs Geuze (WIPO) acted as Secretary to the Working Group.

Agenda Item 3: Adoption of the Agenda

11. The Working Group adopted the draft agenda (document LI/WG/DEV/1/1 Prov.) without modification.

Agenda Item 4: Possible Improvements to the Procedures Under the Lisbon Agreement

12. Discussions were based on document LI/WG/DEV/1/2 Rev.

13. The Chair noted that there appeared to be consensus that it would be in the interest of users of the Lisbon system, and would contribute to legal certainty, to introduce the possibility for the competent authorities of contracting countries to issue statements of grant of protection.

14. Following the views expressed by a number of delegations during the course of the discussions, the Secretariat prepared a revised version of the text of proposed new Rule 11*bis* for consideration by the Working Group. That text is contained in the Annex attached to the present Summary.

15. With regard to the matter of electronic communications, the Chair noted that it would be useful to include in the Regulations provisions for the establishment by the Director General of Administrative Instructions, similar to those already existing under the Madrid System for the International Registration of Marks and the Hague System for the International Registration of Industrial Designs, which would deal with the conditions for and modalities of such communications.

16. The Chair noted that, while the use of electronic communications may be a preferred option and would be encouraged by the International Bureau, nevertheless such method of communication would not be imposed upon the competent authority of any contracting country.

17. Following the comments made by a number of delegations during the course of the discussions, the Secretariat prepared a revised text of the Spanish language version of proposed new Rule 23*bis*(4), as well as a draft text for a possible amendment to Rule 22, consequential to proposed new Rule 23*bis*, as contained in the Annex attached to the present Summary.

18. The Chair noted that the question of possible consequential amendments had been raised by a number of delegations and recalled that, as indicated in document LI/WG/DEV/1/2 Rev., this was something that the contracting countries and the International Bureau would need to consider further, both in relation to new Rule 11*bis* and new Rule 23*bis*.

19. The Chair concluded that the Working Group had agreed that the International Bureau submit to the Assembly of the Lisbon Union, for adoption at its session in September 2009, proposed new Rule 11*bis* and new Rule 23*bis*, and the amendment of Rule 22, as set out in the Annex to the present document, along with any further consequential amendments that are necessary for ensuring consistency with new Rules 11*bis* and 23*bis*.

Agenda Item 5: Other Matters

20. Following an exchange of views among delegations participating in the Working Group, the Chair concluded that the Working Group had given ample guidance to the International Bureau and to the Assembly of the Lisbon Union for further work and that there was a clear consensus that the work embarked upon should continue, in particular as there was a need to look for improvements of the Lisbon system, which would make the system more attractive for States and users while preserving the principles and objectives of the Lisbon Agreement.

21. The Chair further concluded that the Working Group had agreed, in particular:

(a) that Annex II of document LI/WG/DEV/1/2 Rev. be submitted to the Assembly of the Lisbon Union at its session in September 2009, with the recommendation that the Assembly mandate the Working Group to further consider the general overview of the Lisbon system contained therein;

(b) that the International Bureau conduct a survey among contracting countries of the Lisbon Agreement, States non-members of the Lisbon system, interested intergovernmental and non-governmental organizations and interested circles, with a view to ascertaining how the Lisbon system might be improved, in order that the system would become more attractive for users and prospective new members of the Lisbon Agreement while preserving the principles and objectives of the Agreement;

(c) that the International Bureau conduct a study on the relationship between regional systems for the protection of geographical indications and the Lisbon system, and examine the conditions for, and the possibility of, future accession to the Lisbon Agreement by competent intergovernmental organizations;

(d) that the Assembly of the Lisbon Union be recommended to request the Director General to convene further meetings of the Working Group with a view to exploring further possible improvements to the procedures under the Lisbon Agreement and considering the results of the survey and the study contemplated under subparagraphs (b) and (c), above.

Agenda Item 6: Summary by the Chair

22. The Working Group approved the Summary by the Chair as contained in the present document.

23. A draft of the full report of the session of the Working Group will be distributed for comments among the delegations and representatives that participated in the meeting. Any such comments can be submitted within two months from the distribution date, after which the draft report will be amended, as required, and made available to delegations on the WIPO website, for its adoption in due course.

Agenda Item 7: Closing of the Session

24. The Chair closed the Session on March 20, 2009.

Regulations Under the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration

(as in force on ~~April 1, 2002~~)

LIST OF RULES

Chapter 4
Declarations of Refusal of Protection; Optional Statements of Grant of Protection

[…]

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.

(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.

[…]

Chapter 6
Miscellaneous Provisions and Fees

[…]

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.

[…]

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.

[…]

[Annex II follows]

ANNEX II

Date of receipt: 23 mars 2009 (23.03.2009) PCT/OA2009/000001

ORGANISATION AFRICAINE DE LA PROPRIETE INTELLECTUELLE (O.A.P.I)

AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (O.A.P.I)

N° 1649/OAPI/DG/DGA/ADG/PIG

Yaoundé, le 16 MARS 2009

LE DIRECTEUR GENERAL

A

Monsieur Ernesto Rubio Sous-Directeur Général de l'OMPI
34, chemin des Colombettes-1211
Genève 20 - Suisse
Tel (41-22) 338 91 11 Fax: (41-22) 733 54 28

Objet : Groupe de travail sur le développement du système de Lisbonne (appellation d'origine) Genève du 17 au 20 mars 2009

Monsieur le Sous-directeur Général,

J'ai l'honneur d'accuser réception de votre lettre du 11mars 2009, invitant l'Organisation Africaine de la Propriété Intellectuelle (OAPI) à prendre part à la première session du groupe de travail sur le développement du système de Lisbonne.

La protection des indications géographiques constitue un enjeu majeur pour la reconnaissance de milliers de produits identifiés de par le monde par leur origine géographique. Elle permet également aux groupements de producteurs du monde de différencier leurs produits traditionnels de résister à la concurrence et de se doter d'un facteur de consolidation de leurs marchés.

C'est en cela que nous saluons l'initiative de la mise en place de ce Groupe de travail qui, nous le pensons, devrait confier un mandat clair au Bureau International sur les évolutions possibles que peut connaître l'Arrangement de Lisbonne. Parmi ces évolutions, il y a lieu de mentionner la possibilité qui pourrait être offerte aux Organisations intergouvernementales qui enregistrent des Appellations d'Origine (AO), telle que l'Organisation Africaine de la Propriété Intellectuelle (OAPI), de prendre part au système de Lisbonne.

L'OAPI soutient cette initiative qui est de nature à susciter de nouvelles adhésions à ce traité.

Veuillez agréer, Monsieur le Sous-Directeur Général, l'assurance de ma parfaite considération.

ORGANISATION AFRICAINE DE LA PROPRIETE INTELLECTUELLE O.A.P.I Le Directeur Général

Paulin EDOU EDOU

O.A.P.I B.P. 887 - YAOUNDE - Tél. : (237) 220 57 00/220 39 11 - Fax : (237) 220 57 27/220 57 21 - URL : http://oapi.wipo.net - Email : oapi.cs@oapi.as.wipo.net

[Translation by the International Bureau of a letter dated March 16, 2009]

From: Mr. Paulin Edou Edou
Director General of the African Intellectual
Property Organization (OAPI)

To: Mr. Ernesto Rubio
Assistant Director General, WIPO

Subject: Working Group on the Development of the Lisbon System (appellations of origin), March 17 to 20, 2009, Geneva.

Dear Assistant Director General,

I would respectfully acknowledge receipt of your letter of March 11, 2009, inviting the African Intellectual Property Organization to participate in the first session of the Working Group on the Development of the Lisbon System.

The protection of geographical indications is a major challenge for recognizing thousands of products identified the world over by means of their geographical origin. It also enables the world's producer groups to differentiate their traditional products, resist competition and consolidate their markets.

This is why we salute the initiative to set up this Working Group which, we believe, should provide a clear mandate to the International Bureau on possible developments of the Lisbon Agreement. Among those developments, it is worth mentioning the possibility which might be provided to intergovernmental organizations that register appellations of origin (AO), such as the African Intellectual Property Organization (OAPI), of participating in the Lisbon System.

The OAPI supports this initiative which will encourage new accessions to this treaty.

Faithfully yours,

Paulin EDOU EDOU
Director General

[Annex III follows]

ANNEX III

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique des noms français des États)
(in the alphabetical order of the names in French of the States)

ALGÉRIE/ALGERIA

Belkacem ZIANI, directeur général de l'Institut national algérien de la propriété industrielle (INAPI), Alger

Malika HABTOUN (Mme), sous-directrice de la métrologie et de la propriété industrielle au Ministère de l'industrie et de la promotion des investissements, Alger

Hayet MEHADJI (Mme), secrétaire diplomatique, Mission permanente, Genève

BULGARIE/BULGARIA

Magdalena RADULOVA (Mrs.), State Examiner, National and International Legal Activity Directorate, Patent Office of the Republic of Bulgaria, Sofia

Antonia IAKMADJIEVA (Miss), Senior Examiner, Marks and Geographical Indications Directorate, Patent Office of the Republic of Bulgaria, Sofia

Vladimir YOSSIFOV, Advisor, Permanent Mission, Geneva

COSTA RICA

Laura THOMPSON (Sra.), Embajadora, Representante Permanente, Misión Permanente, Ginebra

Randall SALAZAR SOLÓRZANO, Director, Junta Administrativa, Registro Nacional, San José

Carlos GARBANZO, Ministro Consejero, Misión Permanente, Ginebra

CUBA

Maylen MARCOS MARTÍNEZ (Sra.), Especialista en Invenciones y Marcas, Oficina Cubana de la Propiedad Industrial (OCPI), La Habana

Alina ESCOBAR DOMÍNGUEZ (Sra.), Tercera Secretaria, Misión Permanente, Ginebra

FRANCE

Véronique FOUKS (Mme), chef du Service juridique et international, Institut national de l'origine et de la qualité (INAO), Paris

Christophe GUILHOU, ministre conseiller, représentant permanent adjoint, Mission permanente, Genève

Delphine LIDA (Mlle), conseiller (Affaires économiques et développement), Mission permanente, Genève

GÉORGIE/GEORGIA

Nikoloz GOGILIDZE, Director of Legal Affairs, National Intellectual Property Center (SAKPATENTI), Tbilisi

HONGRIE/HUNGARY

Mihály Zoltán FICSOR, Vice-President, Hungarian Patent Office, Budapest

Imre GONDA, Deputy Head of Department, Hungarian Patent Office, Budapest

Tamás VATTAI, Third Secretary, Permanent Mission, Geneva

IRAN (RÉPUBLIQUE ISLAMIQUE D')/IRAN (ISLAMIC REPUBLIC OF)

Ahmed BAEIDI NEJAD, Ambassador, Deputy Permanent Representative, Permanent Mission, Geneva

Hekmatollah GHORBANI, Senior Legal Expert, Ministry of Foreign Affairs, Tehran

Yazdan NADALIZADEH, Second Counsellor, Permanent Mission, Geneva

ITALIE/ITALY

Renata CERENZA (Mrs.), First Examiner, International and Community Trademarks, Italian Patent and Trademark Office, Ministry of Economic Development, Rome

Augusto MASSARI, Counsellor, Permanent Mission, Geneva

Francesca FUSCO (Miss), Intern, Permanent Mission, Geneva

MEXIQUE/MEXICO

Juan GARZA SECO-MAURER, Director Divisional de Oficinas Regionales, Instituto Mexicano de la Propiedad Industrial (IMPI), México

José Alberto MONJARÁS OSORIO, Subdirector Divisional de Servicios Legales, Registrales e Indicaciones Geográficas, Instituto Mexicano de la Propiedad Industrial (IMPI), México

MONTÉNÉGRO/MONTENEGRO

Dušanka PEROVIĆ CETKOVIĆ (Mrs.), Deputy Director, Intellectual Property Office, Ministry of Economic Development, Podgorica

PÉROU/PERU

Javier Manuel PAULINICH VELARDE, Director General de OMC y Negociaciones Económicas Internacionales, Ministerio de Relaciones Exteriores, Lima

Elmer SCHIALER, Ministro, Representante Permanente Adjunto, Misión Permanente, Ginebra

Giancarlo LEÓN COLLAZOS, Segundo Secretario, Misión Permanente, Ginebra

PORTUGAL

Joana MOURA OLIVEIRA (Mrs.), Jurist, International Relations Department, National Institute of Industrial Property (INPI), Ministry of Justice, Lisbon

RÉPUBLIQUE DE MOLDOVA/REPUBLIC OF MOLDOVA

Victoria BLIUC (Mrs.), Director, Trademark and Industrial Design Department, State Agency on Intellectual Property (AGEPI), Kishinev

RÉPUBLIQUE POPULAIRE DÉMOCRATIQUE DE CORÉE/DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

KIM Yong Ho, Officer, National Coordinating Committee, Pyongyang

SOK Jong Myong, Counsellor, Permanent Mission, Geneva

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Petr BAMBAS, Deputy Permanent Representative, Permanent Mission, Geneva

Iva KOUTNÁ (Mrs.), Director, Trademarks Department, Industrial Property Office, Prague

Lucie TRPÍKOVÁ (Mrs.), Lawyer, International Department, Industrial Property Office, Prague

Petra MYŠÁKOVÁ (Miss), International Law and Economic Assistant, Permanent Mission, Geneva

SERBIE/SERBIA

Vladimir MARIĆ, Head, Trademark Department, Intellectual Property Office, Belgrade

Vesna FILIPOVIĆ-NIKOLIĆ (Mrs.), Counsellor, Permanent Mission, Geneva

SLOVAQUIE/SLOVAKIA

Janka ORAVCOVÁ (Mrs.), International Trademark Department, Industrial Property Office of the Slovak Republic, Banská Bystrica

TOGO

Boutchou SIBABI, directeur de cabinet, Ministère de l'industrie, de l'artisanat et des innovations technologiques, Lomé

TUNISIE/TUNISIA

Nafaa BOUTITI, juriste chargé des créations industrielles, Institut national de la normalisation et de la propriété industrielle (INNORPI), Ministère de l'industrie et de l'énergie et des PME, Tunis

II. ÉTATS OBSERVATEURS/OBSERVER STATES

ALLEMAGNE/GERMANY

Li-Feng SCHROCK, Senior Ministerial Counsellor, Trade Mark and Unfair Competition, Federal Ministry of Justice, Berlin

ARGENTINE/ARGENTINA

Inés Gabriela FASTAME (Srta.), Primer Secretario, Misión Permanente, Ginebra

AUSTRALIE/AUSTRALIA

Tanya SPISBAH (Mrs.), Legal Specialist, International Intellectual Property Section, Office of Trade Negotiations, Department of Foreign Affairs and Trade, Barton

Katherine WILLCOX (Mrs.), Third Secretary, Permanent Mission, Geneva

BOSNIE-HERZÉGOVINE/BOSNIA AND HERZEGOVINA

Lidija VIGNJEVIĆ (Mrs.), Director, Institute for Intellectual Property of Bosnia and Herzegovina, Sarajevo

Ljubica PERIĆ (Mrs.), Counsellor, Permanent Mission, Geneva

BRÉSIL/BRAZIL

Breno Bello DE ALMEIDA NEVES, Director, National Institute of Industrial Property (INPI), Rio de Janeiro

CANADA

Darren SMITH, Second Secretary, Permanent Mission, Geneva

CHILI/CHILE

Luciano CUERVO, Economista, Departamento de Propiedad Intelectual, Dirección General de Asuntos Económicos Internacionales, Ministerio de Relaciones Exteriores, Santiago

CHINE/CHINA

YAO Kun, Director, GI Examination Division, Trademark Office, State Administration for Industry and Commerce (SAIC), Beijing

ÉGYPTE/EGYPT

Mostafa ABOU EL ENEIN, Head, Commercial Registry Authority, Ministry of Trade and Industry, Cairo

ESPAGNE/SPAIN

Javier Alfonso MORENO RAMOS, Subdirector General, Departamento de Coordinación Jurídica y Relaciones Internacionales, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Industria, Turismo y Comercio, Madrid

Carmen JORDAN ASENSI (Sra.), Consejera de Política Comercial de la UE, Ministerio de Industria, Turismo y Comercio, Madrid

Yolanda GUTIÉRREZ (Sra.), Funcionaria, Ministerio de Agricultura, Pesca y Alimentación, Madrid

Antonio CARPINTERO, Consejero (Asuntos Agrícolas, Pesca y Fiscales), Misión Permanente, Ginebra

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Deborah LASHLEY-JOHNSON (Mrs.), Attaché (Intellectual Property, Economic and Science Affairs), Permanent Mission, Geneva

Nancy OMELKO (Mrs.), Attaché (Intellectual Property), Permanent Mission, Geneva

EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE/THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Biljana LEKIK (Mrs.), Deputy Head, Department for Trademarks, Industrial Designs and Geographical Indications, State Office of Industrial Property (SOIP), Skopje

GUATEMALA

Lorena BOLAÑOS (Sra.), Consejera Legal, Misión Permanente, Ginebra

IRAQ

Ahmed AL-NAKASH, Third Secretary, Permanent Mission, Geneva

JAPON/JAPAN

Kenichiro NATSUME, First Secretary, Permanent Mission, Geneva

LITUANIE/LITHUANIA

Irena ENDRIUŠKIENĖ (Mrs.), Attaché (Agriculture), Permanent Mission, Geneva

MAROC/MOROCCO

Nafissa BELCAID (Mme), directeur du Pôle des signes distinctifs, Office marocain de la propriété industrielle et commerciale (OMPIC), Casablanca

QATAR

Ahmed Yousif AL-JUFAIRI, Head, Industrial Property Office, Ministry of Economy and Trade, Doha

Nasser Saleh H. AL SULAITI, Trade Marks Registrar, Industrial Property Office, Ministry of Economy and Commerce, Doha

ROUMANIE/ROMANIA

Liviu BULGĂR, Director, Legal and International Affairs Directorate, State Office for Inventions and Trademarks (OSIM), Bucharest

ROYAUME-UNI/UNITED KINGDOM

Gaynor ACE (Mrs.), Senior Policy Officer, Trade Marks and Designs, UK Intellectual Property Office, Newport

SOUDAN/SUDAN

Amal Hassan EL TINAY (Mrs.), Registrar General of Intellectual Property, Ministry of Justice, Khartoum

SUISSE/SWITZERLAND

Alexandra GRAZIOLI (Mme), conseillère juridique, Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

THAÏLANDE/THAILAND

Tanyarat MUNGKALARUNGSI (Miss), First Secretary, Permanent Mission, Geneva

TURQUIE/TURKEY

Gonca ILICALI (Miss), Trademark Examiner, Trademarks Department, Turkish Patent Institute, Ankara

Serap TEPE (Miss), Trademark Examiner, Trademarks Department, Turkish Patent Institute, Ankara

III. OSERVATEURS/OBSERVERS

PALESTINE

Osama MOHAMMED, Counsellor, Permanent Observer Mission, Geneva

Baker M.B. HIJAZI, First Secretary, Permanent Observer Mission, Geneva

IV. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/ INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

COMMUNAUTÉS EUROPÉENNES (CE)/ EUROPEAN COMMUNITIES (EC)

Claudia COLLA (Miss), Legal and Policy Affairs Officer, Directorate General for Internal Market, European Commission, Brussels

Georgios KRITIKOS, Senior Administrator, Geneva Liaison Office, General Secretariat, Council of the European Union, Geneva

Sergio BALIBREA, Counsellor, Permanent Mission, Geneva

Matteo GRAGNANI, Intern, Permanent Mission, Geneva

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE ORGANIZATION (WTO)

Thu-Lang TRAN WASESCHA (Mrs.), Counsellor, Intellectual Property Division, Geneva

Wolf MEIER-EWERT, Legal Affairs Officer, Intellectual Property Division, Geneva

V. ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES/ INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Association brésilienne de la propriété industrielle (ABPI)/Brazilian Industrial Property Association (ABPI)
Ana Lúcia DE SOUSA BORDA (Mrs.) (Rio de Janeiro)

Association communautaire du droit des marques (ECTA)/European Communities Trade Mark Association (ECTA)
Anne-Laure COVIN (Mrs.) (Legal Co-ordinator, Antwerp)
Florent GEVERS (Law Committee Member, Antwerp)

Association internationale pour les marques (INTA)/International Trademark Association (INTA)
Bruno MACHADO (Geneva Representative, Rolle)
Constanze SCHULTE (Mrs.) (INTA Geographical Indications Committee member, Madrid)

MARQUES (Association des propriétaires européens de marques de commerce)/MARQUES (Association of European Trademark Owners)
Miguel Angel MEDINA (Chair, Madrid)
Keri JOHNSTON (Ms.) (Member, Toronto)

Organisation pour un réseau international des indications géographiques (OriGIn)/ Organization for an International Geographical Indications Network (OriGIn)
Massimo VITTORI (Secretary General, Versoix)
Ida PUZONE (Miss) (Project Manager, Versoix)

VI. BUREAU/OFFICERS

Président/Chair:	Mihály Zoltán FICSOR (Hongrie/Hungary)
Vice-présidents/Vice-Chairs:	Randall SALAZAR SOLÓRZANO (Costa Rica)
	Belkacem ZIANI (Algérie/Algeria)
Secrétaire/Secretary:	Matthijs GEUZE (OMPI/WIPO)

VII. SECRÉTARIAT DE L'ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI)/ SECRETARIAT OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Francis GURRY, directeur général/Director General

Ernesto RUBIO, sous-directeur général/Assistant Director General

Grégoire BISSON, chef du Service juridique des systèmes d'enregistrement international/ Head, International Registration Systems Legal Service

Matthijs GEUZE, conseiller principal au Bureau du sous-directeur général/Senior Counsellor, Office of the Assistant Director General

Päivi LÄHDESMÄKI (Mlle/Miss), juriste principale au Service juridique des systèmes d'enregistrement international/Senior Legal Officer, International Registration Systems Legal Service

William O'REILLY, juriste principal au Service juridique des systèmes d'enregistrement international/Senior Legal Officer, International Registration Systems Legal Service

Marina FOSCHI (Mlle/Miss), juriste au Service juridique des systèmes d'enregistrement international/Legal Officer, International Registration Systems Legal Service

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