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STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS

**Thirteenth session
Geneva, October 25–29, 2004**

**OBSERVATIONS BY THE DELEGATION OF SWITZERLAND
CONCERNING DOCUMENT SCT/12/2 (DRAFT REVISED
TRADEMARK LAW TREATY)**

document prepared by the Secretariat

1. The annex to this document contains a communication by the Delegation of Switzerland concerning document SCT/12/2 (draft revised Trademark Law Treaty), which was received by the Secretariat on August 16, 2004.

2. The Committee is invited to take note of this communication and, where appropriate, to express its opinion on the proposals contained in the communication.

[Annex follows]

ANNEX

OBSERVATIONS BY SWITZERLAND ON DOCUMENT SCT/12/2
DRAFT REVISED TRADEMARK LAW TREATY (TLT)

1. At the Twelfth Session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), time was insufficient to allow the Committee to engage in an article-by article discussion of the draft revised Trademark Law Treaty (TLT). Given the recommendation put forward to the General Assemblies of the Member States of WIPO that a diplomatic conference should be convened in the first half of 2006, and given the limited amount of time at the Committee's disposal, the Swiss delegation wishes, in order to facilitate further discussion, to draw the attention of Committee members to the new wording of Article 2 of the draft revised TLT (see document SCT/12/2, p. 3), which concerns the scope of said Treaty.

2. The new wording of Article 2 of the TLT clearly provides that the TLT shall apply to visible signs, including certain new types of marks such as color, position and motion marks. Our delegation is of the opinion that the scope of the TLT should, in the interest of users, be as broad as possible. As a result, our delegation has certain doubts regarding the advisability of excluding hologram marks from the scope of the TLT and in particular regarding the reasons that would justify, for example, treating hologram marks differently to color marks. The Swiss delegation therefore considers it more appropriate to negotiate a treaty which would compel the Contracting Parties who agree to register these new kinds of marks to respect the maximum requirements of the TLT.

3. Given the numerous developments in this field, particularly of a technical nature, it would, nevertheless, be wise to include a general provision in Article 3(1) of the TLT, which would allow Parties to require that the holder identify these new types of marks at the time of application. Such a provision could be modeled on the existing provision for three-dimensional marks in the TLT (Article 3(1)(a)(xi)) or on the provision for color marks set out in Rule 9(4)(a)(*vii bis*) of the Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement. The details relating to the formal requirements for each new type of mark could be provided for in the Common Regulations; the latter could be more easily revised if the Committee were to accept the proposal to create an Assembly. It should be recalled that, at present, the TLT prohibits Contracting Parties from imposing additional requirements such as a color code.

4. The Swiss delegation invites Committee members to examine this question with a view to discussing it at the next session of the Committee.

[End of Annex and of document]