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**SPECIAL UNION FOR THE INTERNATIONAL CLASSIFICATION OF GOODS AND
SERVICES FOR THE PURPOSES OF THE REGISTRATION OF MARKS
(NICE UNION)**

COMMITTEE OF EXPERTS

**Nineteenth Session
Geneva, October 2 to 10, 2003**

ADOPTION OF AMENDMENTS AND
OTHER CHANGES TO THE NICE CLASSIFICATION;
EXTENSION OF THE CURRENT REVISION PERIOD AND FREQUENCY OF
SESSIONS OF THE PREPARATORY WORKING GROUP;
ENTRY INTO FORCE OF THE DECISIONS OF THE COMMITTEE OF EXPERTS;
MODIFICATION OF THE RULES OF PROCEDURE OF THE COMMITTEE OF EXPERTS

document prepared by the International Bureau

ADOPTION OF AMENDMENTS AND OTHER CHANGES TO THE NICE
CLASSIFICATION

1. One of the tasks of the Committee of Experts of the Nice Union set up under Article 3 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (hereinafter referred to as the “Committee of Experts,” the “Nice Agreement” and the “Classification,” respectively) is to decide on amendments and other changes in the Classification.
2. However, the adoption procedure under the Geneva Act (1977) of the Nice Agreement is different from the one under the original Nice Agreement (1957) and under the Stockholm Act (1967) of that Agreement.

3. Under the Geneva Act, these rules are laid down in Article 3(7)(a), (b), and (c). They read as follows:

“(7)(a) Subject to subparagraph (b), the decisions of the Committee of Experts shall require a simple majority of the countries of the Special Union represented and voting.

“(b) Decisions concerning the adoption of amendments to the classification shall require a majority of four-fifths of the countries of the Special Union represented and voting. ‘Amendment’ shall mean any transfer of goods or services from one class to another or the creation of any new class.

“(c) The rules of procedure referred to in paragraph (4) shall provide that, except in special cases, amendments to the classification shall be adopted at the end of specified periods; the length of each period shall be determined by the Committee of Experts.”

4. Under the original Nice Agreement and under the Stockholm Act, these rules are contained in Article 3(3) to (6). They read as follows:

“(3) Decisions of the Committee concerning amendments to the classification shall require the unanimous consent of the contracting countries. ‘Amendment’ shall mean any transfer of goods from one class to another or the creation of any new class entailing such transfer.

“(4) Decisions of the Committee concerning additions to the classification shall require a simple majority of the votes of the contracting countries.

“(5) Each expert shall have the right to submit his opinion in writing or to delegate his powers to the expert of another country.

“(6) If a country does not appoint an expert to represent it, or if the expert appointed does not submit his opinion within a period to be prescribed by the Regulations, the country concerned shall be considered to have accepted the decision of the Committee.”

5. The period referred to in Article 3(6) of the original Nice Agreement and of the Stockholm Act was prescribed by Rule 5 of the Rules of Procedure of the Committee of Experts adopted on September 10, 1973. This Rule reads as follows:

“(1) The period referred to in Article 3(6) of the Nice Agreement shall be two months from the date of dispatch of the notification by the International Bureau of the Committee’s decision. Votes thus communicated shall only be taken into consideration if they are in the possession of the Director General within the prescribed period.

“(2) The communication of the vote must come either from the Ministry of Foreign Affairs, or from the competent Administration of the State in question.”

6. It should be noted that the Rules of Procedure of the Committee of Experts were amended on May 28, 1982, at the fourteenth session of the Committee of Experts and that the wording of its Rule 5, as quoted in the foregoing paragraph, was deleted meaning that, since then, the Rules of Procedure no longer lay down the period referred to in Article 3(6) of the original Nice Agreement and of the Stockholm Act. It may also be observed that the concept of “amendment” is not defined in exactly the same manner in the original Nice Agreement and the Stockholm Act, on the one hand, and in the Geneva Act, on the other.

7. At the time of drafting this document, 64 of the 70 member States of the Nice Union are bound by the Geneva Act, four (Algeria, Israel, Morocco and Serbia and Montenegro) by the Stockholm Act and two (Lebanon and Tunisia) by the original Nice Agreement. This means that the procedure requiring unanimity of the contracting countries (see paragraph 4, above) remains in force for six countries and it suffices for one of them to oppose the adoption of an amendment which has been accepted by all the other members of the Nice Union for a situation to arise in which two different texts of the Classification would co-exist.

8. In order to avoid the undesirable co-existence of two different texts of the Classification, the Committee of Experts, which found itself in a similar situation during its five previous sessions (in 1982, 1985, 1990, 1995 and in 2000), decided at each of these sessions not to proceed to voting on amendments, but to simply express its opinion (“in favor” or “not in favor”) on the desirability of adopting such amendments; in those cases where there was unanimity among the members of the Nice Union present on the desirability of accepting certain amendments, the favorable opinion, thus expressed, would be considered acceptance of the amendments if, at the expiration of the period of two months from the date of dispatch of the notification by the International Bureau of the changes decided by the Committee of Experts,⁽¹⁾ no vote expressing opposition, by a State member of the Nice Union but not yet bound by the Geneva Act and not represented at the session of the Committee of Experts, had been received (see paragraphs 9 to 11 of document CLIM/CE/XIV/6, paragraph 7 of document CLIM/CE/XV/7, paragraph 9 of document CLIM/CE/XVI/5, paragraph 10 of document CLIM/CE/XVII/5, and paragraph 11 of document CLIM/CE/18/5). It may be noted that no vote expressing opposition was received from any such State after the sessions of the Committee of Experts in 1982, 1985, 1990, 1995 and in 2000.

9. In the view of the International Bureau, it is desirable to adopt a procedure which, although respecting the rights of the six member States of the Nice Union not yet bound by the Geneva Act (hereinafter referred to as “the six States”), would go a long way to avoiding the uncertainty—resulting from the fact that the fate of amendments remains uncertain for several months after the session of the Committee of Experts—generated by the procedure followed in the past. In view of the fact that the six States are able to participate in the session of the Committee of Experts, or to delegate their powers to an expert from another country, and have the possibility of expressing any opposition to the adoption of an amendment, which would enable the Committee of Experts to find an appropriate solution at once, the International Bureau proposes to the Committee of Experts that it adopt the following procedure.

⁽¹⁾ This is the period specified in Rule 5 of the Rules of Procedure of the Committee of Experts adopted in 1973 (see paragraphs 5 and 6, above).

10. Each of the six States would have the possibility, when receiving the proposed amendments submitted to the Committee of Experts⁽²⁾ and if it does not intend to be represented at the nineteenth session of the Committee of Experts, of communicating its opposition to the International Bureau by August 29, 2003 (which would enable the International Bureau to enter into discussions, prior to the session of the Committee of Experts, with a State that communicated such opposition). All the proposed amendments with respect to which no opposition was raised in that way (or maintained up to the opening of the session) by any of the six States and which are approved by the Committee of Experts as they stand or simply with changes of mere form, on a four-fifths majority of the States party to the Geneva Act represented and voting at the nineteenth session, and if none of the six States opposes the amendment during the session, would be considered adopted by the Committee of Experts. If a proposed amendment with respect to which no opposition had been raised before the session by any of the six States (or maintained up to the opening of the session) is approved by the Committee of Experts with changes other than those of mere form, it would be for the Committee of Experts to decide whether a change made to a proposed amendment was one of mere form or not, or if an amendment is approved as it stands, or in new terms, despite such opposition or to take opposition into account, a procedure similar to that followed in 1982, 1985, 1990, 1995 and in 2000 would then apply: approval by the Committee of Experts would not be given in the form of a vote but simply as a “favorable opinion” which would be submitted to each of the six States that had not been represented at the session and would only become a formal decision of the Committee of Experts if none of those States expressed by correspondence a negative opinion within a period of two months after dispatch by the International Bureau of the report on the session of the Committee of Experts.

11. It is further proposed that the procedure set out in the foregoing paragraph should not be included in the Rules of Procedure of the Committee of Experts since it is to be hoped that by the twentieth session of the Committee of Experts each of the six States will have become a party to the Geneva Act so that it will no longer be necessary in the future to employ a complicated procedure to avoid the risk of two different texts of the Classification existing at the same time.

EXTENSION OF THE CURRENT REVISION PERIOD AND FREQUENCY OF SESSIONS OF THE PREPARATORY WORKING GROUP OF THE COMMITTEE OF EXPERTS OF THE NICE UNION

12. Rule 7 of the Rules of Procedure of the Committee of Experts headed “Adoption of Amendments to the Nice Classification” reads as follows: “Except in special cases, amendments to the Nice Classification shall be adopted at the end of specified revision periods; the length of each period shall be determined by the Committee of Experts.”

⁽²⁾ These are the proposed amendments identified by the letters “AP” on pages 13 to 15 of the Annex to document CLIM/CE/19/3, on pages 10 and 12 to 15 of the Annex to document CLIM/CE/19/4 and on pages 14 and 24 of document CLIM/CE/19/5.

13. At its last session, held in October 2000, the Committee of Experts had agreed that the next revision period would be three years, without prejudice to the possibility of deciding, at the next session, to extend it to five years (see paragraph 18 of document CLIM/CE/18/5).

14. Due to the small amount of amendments and changes to the Classification that are submitted to the Committee of Experts for adoption, it is proposed a two-year extension to the current revision period, so that the revision period should last for five years in the same way as the preceding two. This extension will allow the Preparatory Working Group of the Committee of Experts of the Nice Union (hereinafter referred to as the "Working Group") to continue the work on the revision of the Classification, which has already started before the present session of the Committee of Experts.

15. Under Rule 4(1) of the Rules of Procedure of the Committee of Experts, it is for the Committee of Experts to determine the frequency of sessions of the Working Group. For the continuation of the current revision period, it is proposed that the Committee of Experts should entrust the International Bureau with the task of convening the Working Group, as is current practice, in the early spring of 2004.

ENTRY INTO FORCE OF THE DECISIONS OF THE COMMITTEE OF EXPERTS

16. It is proposed that amendments and other changes to the Classification resulting from the revision period of three years, as decided by the Committee of Experts, should enter into force on July 1, 2004. In view of Article 4(1) of the Nice Agreement, this means that notification of the decisions of the Committee of Experts should be sent by the International Bureau at the latest on January 1, 2004.

17. In the meantime, the International Bureau will issue a Circular containing the amendments and other changes approved by the Committee of Experts, without having to publish a new edition of the classification before the end of the two-year extension (see paragraph 19 of document CLIM/CE/18/5).

MODIFICATION OF THE RULES OF PROCEDURE OF THE COMMITTEE OF EXPERTS

18. Rule 8 of the Rules of Procedure of the Committee of Experts, under the heading "Publication of the Report," reads as follows: "The report on the work of each session of the Committee of Experts, or a summary drawn up by the International Bureau, shall be published in the review *WIPO Magazine*."

19. It is proposed that in the final part of Rule 8 of the Rules of Procedure the following wording: "in the review *WIPO Magazine*" be replaced by "in the review *WIPO Magazine* or on the WIPO Web site on the Internet."

20. *The Committee of Experts is invited to pronounce on the proposals contained in paragraphs 10, 11, 14, 15, 16, 17 and 19 of this document.*