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Working Group on the Development of the Lisbon System (Appellations of Origin)

Fifth Session
Geneva, June 11 to 15, 2012

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") met in Geneva, from June 11 to 15, 2012.

2. The following Contracting Parties of the Lisbon Union were represented at the session: Algeria, Congo, Costa Rica, Cuba, Czech Republic, France, Hungary, Iran (Islamic Republic of), Italy, Mexico, Peru, Portugal, Republic of Moldova, Serbia (14).

3. The following States were represented as observers: Angola, China, Colombia, Denmark, Dominican Republic, Germany, Ireland, Romania, Spain, Switzerland, United States of America (11).

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

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

6. The list of participants is contained in document LI/WG/DEV/5/INF/1 Prov. 2[*].

[*] The final list of participants will be made available as an Annex to the report of the session.

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mrs. Wang Binying, Deputy Director General, opened the session, recalled the mandate of the Working Group and introduced the draft agenda, as contained in document LI/WG/DEV/5/1 Prov. The Director General of WIPO, Mr. Francis Gurry, addressed the Working Group later on in the course of the session.

8. The Deputy Director General then recalled some developments concerning the Lisbon system since the fourth session of the Working Group.

9. First, the Deputy Director General reported that continuous progress has been made in expanding the use of e-mail for the communication of international applications and notifications under the Lisbon procedures. She added that to date, e-mail had been established as the principal means of communication under the Lisbon procedures between WIPO and the competent authorities of 18 member States.

10. Second, the Deputy Director General pointed out that the Lisbon Registry had started to apply an e-mail alert system for the communication of new developments concerning the Lisbon system to interested users, such as, for example, the publication on the WIPO web site of new issues of the Lisbon Bulletin and of documents to be considered by the Working Group. In that respect, she added that interested users were requested to convey their e-mail address to the International Bureau of WIPO.

11. Third, she indicated that new registrations had been recorded for appellations of origin from Mexico, Peru and Serbia.

12. As regards the objectives of the fifth session of the Working Group, the Deputy Director General recalled that the Working Group had been established, in September 2008, by the Lisbon Union Assembly and that its first session had been held in March 2009. She went on to say that, as a result of the recommendations agreed at that session, the Assembly had extended the mandate of the Working Group, so as to allow the Working Group to engage in a full review of the Lisbon system and to explore what changes to the system would be necessary to make an increase of its membership likely. The Deputy Director General pointed out that, since then, three further meetings had taken place, in which the Working Group had started to turn the review into a treaty-drafting exercise.

13. She further indicated that the basis of the work was contained in two documents, which were prepared by the International Bureau at the request of the Working Group: (1) a document presenting the results of a survey on the Lisbon system among stakeholders, in the widest possible sense, i.e. member State and non-member State governments, intergovernmental organizations (IGOs), non-governmental organizations (NGOs) and interested circles; and (2) a study on the relationship between regional systems for the protection of geographical indications and the Lisbon system and the conditions for the possible accession to the Lisbon Agreement by competent intergovernmental organizations (IGOs).

14. The Deputy Director General further recalled that the Working Group had discussed those two documents at its second session, in August/September 2010 and that, as a result, the International Bureau was requested to prepare for the third session of the Working Group, in May 2011, draft provisions on a number of topics, notably on: (i) definitions for geographical indications and appellations of origin; (ii) the scope of protection for geographical indications and appellations of origin; (iii) prior use; (iv) applications concerning products from trans-border areas; (v) accession criteria for IGOs; (vi) registration requirements; and (vii) procedures for issuing refusals and for challenging refusals.

15. Following discussion of those draft provisions at its third session, the Working Group requested the International Bureau to prepare a complete Draft New Instrument (DNI), while leaving open the question as to the legal instrument by which it might be formalized. In response to this request, the International Bureau prepared such DNI as well as Draft Regulations (DR), along with corresponding explanatory notes, which were discussed by the Working Group at its fourth session, in December 2011.

16. As a result of the fourth session of the Working Group, the International Bureau had prepared, for the present session, revised versions of the DNI and DR, which incorporated, where appropriate, alternative provisions and different options between brackets, on the basis of comments made during the previous session.

17. The Deputy Director General concluded by saying that, clearly, there were still important issues to be dealt with before a Diplomatic Conference could be convened. Nevertheless, she believed that the progress that the Working Group had made so far allowed for some optimism as to the end result of the review of the Lisbon system. Consequently, the working documents for the present meeting invited the members of the Working Group not only to consider the revised DNI and DR provision by provision, but also to provide guidance on the likely evolution of the future work of the Working Group. In particular, the Deputy Director General said that it would be helpful, for planning purposes, to get the Working Group's insight with respect to the number of further sessions of the Working Group that would be needed before a Diplomatic Conference might be convened.

AGENDA ITEM 2: ELECTION OF A CHAIR AND TWO VICE-CHAIRS

18. Mr. Mihály Ficsor (Hungary) was unanimously elected as Chair of the Working Group, Mr. Alberto Monjarás Osorio (Mexico) and Mr. Behzad Saberi Ansari (Iran (Islamic Republic of)) were unanimously elected as Vice-Chairs.

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

AGENDA ITEM 3: ADOPTION OF THE AGENDA

20. The Working Group adopted the draft agenda (document LI/WG/DEV/5/1 Prov.) without any modification.

AGENDA ITEM 4: ADOPTION OF THE REPORT OF THE FOURTH SESSION OF THE WORKING GROUP

21. The Working Group adopted the revised draft report of the fourth session of the Working Group, as contained in document LI/WG/DEV/4/7 Prov. 2, on the understanding that the phrase "the Representative of the European Union" would be replaced throughout the document by "the Delegation of the European Union" and subject to the correction of a number of translation errors in the French version of the document, as proposed by the Delegation of Switzerland.

AGENDA ITEMS 5 AND 6: DRAFT NEW INSTRUMENT CONCERNING THE INTERNATIONAL REGISTRATION OF GEOGRAPHICAL INDICATIONS AND APPELLATIONS OF ORIGIN ("DNI") AND DRAFT REGULATIONS UNDER THE DNI ("DR")

22. Discussions were based on documents LI/WG/DEV/5/2, LI/WG/DEV/5/3, LI/WG/DEV/5/4 and LI/WG/DEV/5/5.

23. In introducing the documents, the Chair stressed that the full revised versions of the DNI and the DR under consideration had been prepared on the basis of the comments made during the fourth session of the Working Group and, as a result, incorporated the necessary alternative provisions and different options. He further indicated that the documents in question invited the members of the Working Group not only to consider the revised articles and rules but also to provide guidance on how the work should be carried forward and, in particular, to indicate how close the convening of a Diplomatic Conference might be. Lastly, the Chair recalled that the objective of the Working Group was to review and further develop the Lisbon system with a view to making it more attractive for users and prospective new members, while preserving its main principles and objectives.

GENERAL STATEMENTS

24. The Delegation of the European Union reiterated its support for the efforts of the Secretariat to review the international registration system of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (the Lisbon Agreement) with the objective of making the system more attractive for users and prospective new members. The Delegation also stated the importance of the compatibility of the DNI and the DR with the TRIPS Agreement and the Doha Development Agenda negotiations within the framework of the WTO, while also deploring the persisting complexity of the provisions of the DNI and DR and the very broad use of references among various articles and rules, as well as in relation to other international Agreements including the TRIPS Agreement. The Delegation suggested that the Working Group should collectively strive for better regulations and also reiterated its views on the usefulness of the introduction of a dispute settlement mechanism into the DNI to address the need for efficient means to settle disputes between Contracting Parties of the Lisbon system.

25. The Delegation of Italy noted that progress had indeed been achieved in the Working Group and that the revised text of the DNI represented a significant improvement both in terms of text and structure, especially with the inclusion of issues such as evocation and reputation as well as a standing option of providing a unique and ambitious level of protection for both geographical indications and appellations of origin. In parallel, the Delegation expressed the view that the complexities that remained in the text would have to be reduced and supported the Delegation of the European Union’s suggestion concerning the introduction of a dispute settlement mechanism to make sure that protection would be combined with efficient enforcement measures.

26. The Delegation of Angola took note of the progress made in the Working Group and agreed with the Delegation of the European Union in that it would be useful to have a mechanism for dispute settlement. The Delegation stated that if reference was to be made to the mechanisms under the TRIPS Agreement, there might be a need to transpose the TRIPS Agreement into the DNI. In that regard, the Delegation was of the view that it would be better to have a dispute settlement mechanism as featured in many other instruments, and further indicated that a Diplomatic Conference was still far ahead as there was much to do before one could be convened.

27. The Delegation of Algeria said that it was still premature to determine how many sessions of the Working Group would be needed and to decide on a date for a Diplomatic Conference. The Delegation reiterated its commitment to working towards fine-tuning the DNI, while also indicating that it had a number of comments to make on the substance of the DNI itself and that it was of the view that the DNI as it stood was not ready for submission to the General Assembly for purposes of convening a Diplomatic Conference. With regard to the proposal for the

introduction of a dispute settlement mechanism as proposed by the Delegation of the European Union and supported by the Delegation of Italy, the Delegation took note of the proposal but wondered what its possible impact on the whole Lisbon system would be.

28. As regards the convening of a Diplomatic Conference, the Delegation of Iran (Islamic Republic of) said that it would go along with whatever consensus emerged on that issue. With regard to the issue of introducing a dispute settlement mechanism, the Delegation was of the view that any discussion on a dispute settlement mechanism at the present time would be premature. Instead, the Delegation suggested focusing on the various substantive articles and regulations before the Working Group.

29. The Delegation of Switzerland agreed with the comments made by the Delegation of Italy and agreed that the revised documents contained interesting elements that went forward in the direction that the Delegation had asked for. The Delegation further indicated that it was of the view that the new instrument should go beyond a mere registration system so as to offer effective protection to geographical indications and appellations of origin as that would be the added value that WIPO would bring to this area of intellectual property. With regard to the number of meetings that would be necessary before the convening of a Diplomatic Conference, the Delegation was of the view that it would be premature at this stage to take a stance on the matter and said that a more definitive response might be given towards the end of the present session.

30. The Chair assured the Working Group that the question of future work, and whether or not it would be premature to foresee the convening of a Diplomatic Conference, would be returned to at the end of the session of the Working Group. He stated that there certainly seemed to be consensus that the Working Group was making progress and noted that all the delegations seemed to consider the revised documents as a step forward. The Chair was of the view that the Working Group was on the right track but noted that opinions differed on the speed the work should be moving at – there were some indications that the Working Group was not yet ready to initiate the convening of a Diplomatic Conference and that raising that question was somewhat premature. The Chair added that the message from the delegates was that further sessions of the Working Group would need to be held and that the number of Working Group sessions before any stance could be taken on the possibility of convening a Diplomatic Conference was still unclear.

31. The Chair further noted that addressing the issue of dispute settlement was a priority for a couple of delegations who wished to deal with the issue in the context of the drafting exercise, while also noting that some delegations were somewhat reluctant to take up the issue for the time being. The Chair suggested that, in any event, the issue of dispute settlement might be a matter on which the International Bureau could initiate a workshop on the margins of the next session of the Working Group.

32. Referring to the request made to delegates regarding the number of Working Group meetings that would be necessary before a Diplomatic Conference could be convened, the Secretariat provided a practical timeframe related to the issue and pointed out that if it appeared not to be possible to recommend the convening of a Diplomatic Conference to the Lisbon Union Assembly in 2012, it would only be possible to make such a recommendation in October 2013 at the earliest. The Secretariat further specified that if the Assembly followed that recommendation, the procedures to call for a Diplomatic Conference would take at least another six months. If it was assumed that it was not possible to recommend to the Assembly that a Diplomatic Conference might be held at the end of the present session, no Diplomatic Conference would be held until the summer of 2014 at the earliest. In that regard, the Secretariat recalled that the Assembly had requested that the Working Group meet twice a year – as had been the case in 2011 and would be the case in 2012 as well. The Secretariat

indicated that the next meeting would take place in the second week of December and that there would also be a meeting in the first part of 2013, which in turn meant that there would still be three meetings, including the current meeting, before the Assembly meeting in October 2013.

33. On the issue of dispute settlement, the Secretariat recalled the request made by the Working Group at its second session in August/September 2010 to the Secretariat to prepare a paper on the issue of dispute settlement within the Lisbon system. The Secretariat also recalled that the preparation of such paper had been postponed because the Working Group had expressed the wish to focus on a DNI. The Secretariat pointed out that in the meantime the biennial *International Symposium on Geographical Indications* had taken place in Lima, Peru, in June 2011, at which the issue of dispute settlement had been one of the topics addressed. However, the Secretariat felt that more guidance from delegations was needed. In this regard, a conference, as suggested by the Chair, might indeed generate such input. Such a conference could be organized on the margins of the next session of the Working Group, or perhaps on the margins of the session to be held in early 2013. It would not need to take more than half a day and discussions could be held on the basis of an introductory paper of a factual nature, to be prepared by the Secretariat, and presentations by a number of speakers.

34. As regards the study that the Working Group had requested during the second session in 2010, the Delegation of Angola suggested that the Secretariat prepare such document for the next session, as it could be used as a basis for the Working Group's discussions on the matter. The Delegation was of the view that, since the Working Group itself had requested the paper, the proper forum to present and discuss such document would be a Working Group session rather than a side-event on the margins of a given session.

35. The Chair clarified that the half-day conference and the factual paper proposed by the Secretariat would only be the necessary preparatory steps to launch a proper discussion on the issue of dispute settlement within the Working Group. He further indicated that the proposed side event was not intended to move the topic out of the Working Group, but rather to prepare the discussions in the Working Group. The purpose of the proposed side-event would be to generate useful information for the preparation of the study that the Working Group had requested from the Secretariat at the second session of the Working Group.

ARTICLES 1 AND 2: SPECIAL UNION AND ABBREVIATED EXPRESSIONS

36. As regards the proposed Options A and B in Article 1(1), the Delegation of Iran (Islamic Republic of) asked what the implications of choosing one option over the other would be. More specifically, if the final decision would be to adopt a new treaty independent from the current Lisbon Agreement, it was the Delegation's understanding that such choice would entail the creation of a new Special Union and therefore sought clarification as to what the implications would be, for example, in terms of duplications, budgetary issues and possible financial implications for WIPO and its Member States.

37. The Delegation of Peru said that it had not yet opted for one possibility over the other but following on what the Delegation of Iran (Islamic Republic of) had said, it agreed that in order to come up with a proper evaluation of the different options, it would be important to have more details to better assess what the possible implications of choosing one option over the other would be. The Delegation's understanding was that in principle the new instrument would be more attractive if it would be in a Protocol form, because the purpose of the exercise was precisely to expand the number of Contracting Parties, whereas, if the new instrument would merely take the form of an Act revising the current Lisbon Agreement, only the 27 current Lisbon member States would be members of the Lisbon Special Union.

38. The Delegation of Romania expressed the view that it seemed unlikely that the Working Group would opt for a new treaty, as most participants were current members of the Lisbon Agreement. The Delegation pointed out that the adoption of a new treaty would be more complex than a simple revision of the existing Lisbon Agreement and also said that it was under the impression that the current members of the Lisbon Agreement would not be willing to give up the present Agreement to move towards a completely new treaty. The Delegation cautioned that they might end up with too many Treaties dealing with the same subject matter and suggested opting for a Paris Convention type of solution which consisted in having as many revisions as necessary rather than adopting a completely new instrument.

39. The Delegation of France shared the views expressed by the Delegation of Romania with regard to the level of ambition of the Working Group and recalled that the fundamental objective was to make the system more attractive rather than trying to create something entirely new. The Delegation was of the view that high ambitions, in terms of improving the procedures or in terms of establishing a protection mechanism for both geographical indications and appellations of origin, could certainly be met within the framework of the Lisbon Agreement.

40. The Delegation of Italy said that it had not yet determined its position on the matter and that it therefore preferred to wait for the additional explanations that would be provided by the Secretariat and for the completion of the discussions on the substantive articles of the DNI.

41. The Delegation of Costa Rica noted that the question as to whether there should be a revision, a Protocol, or an Act, also had a number of legal implications. In that regard, the Delegation said that in a number of national Constitutions and legislations, as in the case of Costa Rica, the adoption of a new legal instrument such as a Protocol or a treaty required the prior approval of the Parliament or competent legislative Assembly, whereas the adoption of a revised version of an existing Agreement such as the Lisbon Agreement could be decided in a Diplomatic Conference alone. Referring to paragraph 276 of the report contained in document LI/WG/DEV/4/7 Prov.2, the Delegation stressed that at the previous session “other delegations had mentioned the possibility of a revision of the Lisbon Agreement, which was not entirely the same as a Protocol. In essence, the preference of the Working Group was to have a legal instrument related to the Lisbon Agreement, not one replacing it”. The Delegation further recalled that at the previous session most delegations seemed to favor a revision of the Lisbon Agreement precisely to change the fundamental aspects of the Agreement to improve its scope of protection and make it more attractive. The Delegation concluded its intervention by indicating its preference for Option A in Article 2(i) of the DNI.

42. The Delegation of the Republic of Moldova reiterated its preference for a revised version of the Lisbon Agreement even if it understood that Option A may not be the one preferred by non Lisbon members given that in such case they would not be involved in the voting process for the adoption of the new Agreement.

43. The Delegation of Portugal requested additional clarification as regards the real objective of the exercise and what was expected from the new instrument, to be able to adopt a final position on that issue even though it had a slight preference for a revision process.

44. The Delegation of Switzerland said that its response on the legal form of the DNI would depend on the substantive content of the new instrument and added that it shared the views expressed by the Delegation of France concerning the level of ambition of the Working Group, both in terms of substance and possible procedural improvements to the Lisbon system. The Delegation pointed out that it was precisely on the basis of that level of ambition that it had been actively participating in the Working Group in an observer capacity. In that regard, the Delegation recalled that Switzerland was highly interested in becoming a party to the Lisbon Agreement, while adding nonetheless that such accession would also depend on whether the undergoing work on the development of the Lisbon system would suit its needs.

45. The Delegation of Mexico shared the concerns expressed by other delegations and stated that it would appear premature to determine whether the document under consideration should take the form of a new instrument or a revised Lisbon Agreement.

46. The Representative of ORIGIN shared the concerns expressed as regards the level of ambition of the Working Group and therefore suggested adding the term “protection” to the title of the DNI to so that the new title would read “*Draft New Instrument on the Protection of Geographical Indications and Appellations of Origin and their International Registration*”. In his view, if the Working Group wanted to be ambitious, it could not limit its discussions to the simple international registration of geographical indications or appellations of origin.

47. The Delegations of France, Italy and Peru expressed their support for the suggestion from the Representative of ORIGIN.

48. As regards the legal, institutional, and budgetary consequences of one option over the other and the recommendation that the Working Group would make to the Assembly at the end of the day, namely, either a recommendation for a revision of the Lisbon Agreement or a recommendation for the conclusion of a new treaty, the Secretariat pointed out that the answer also depended on who would be entitled to call a Diplomatic Conference either for the revision of the Lisbon Agreement or for the conclusion of a new treaty. The Secretariat clarified that in the case of a revision of the Lisbon Agreement it would be the Lisbon Union Assembly that would be entitled to call such a conference as provided for under Article 13(2) of the Lisbon Agreement, whereas, in the case of the conclusion of a new treaty, it would be the WIPO General Assembly that would decide on the matter. As regards the legal or institutional consequences and, in particular, how the revised Lisbon Agreement would relate to the original Lisbon Agreement, or how the new treaty would relate to the original Lisbon Agreement, the Secretariat pointed out that those issues would come up in the course of the discussion of Articles 28 and 30 of the DNI. With respect to budgetary questions, the Secretariat explained that there were two kinds of budgetary questions, firstly budgetary questions related to the operation of the new instrument, whether it would take the form of a revised Lisbon Agreement or a new treaty, and secondly the budgetary questions related to the Diplomatic Conference that would be held for the conclusion of the treaty that might result from the ongoing work of the Working Group. As regards the first type of budgetary questions, the Secretariat said that those questions would come up during the discussion of Article 24 of the DNI dealing with “Finances”, whereas, as regards the second type of budgetary questions relating to the holding of a Diplomatic Conference for the conclusion of a new instrument, the Secretariat clarified that that question would be part of the Program and Budget of WIPO. The Secretariat pointed out that the current Program and Budget for the biennium 2012-2013 contained a description of the ongoing review exercise of the Lisbon system undertaken by the Working Group, and referred more particularly to the last sentence of that description which read “this review may in the course of the current biennium, 2012-2013, lead to a decision by the Lisbon Union Assembly to call a Diplomatic Conference”. The Secretariat clarified that such sentence did not necessarily mean that a Diplomatic Conference would take place in the current biennium and said that, for example, if the decision was taken at the Assembly meeting of October 2013, obviously the Diplomatic Conference would take place in the next biennium 2014-2015. The Secretariat added that if that were indeed the case, it would probably be taken up as part of the budgetary preparations for that next biennium which would take place in the spring of 2013.

49. The Delegation of Iran (Islamic Republic of) said that, if a new treaty were to be adopted, it was the understanding of the Delegation that two Special Unions would be working in parallel, one for the Lisbon Agreement and one for the new instrument. The question was what budgetary implications this would have.

50. The Secretariat confirmed what it had said about Article 24, while also recalling that in its response it had also referred to Articles 28 and 30 which dealt with the application of the Lisbon Agreement in the context of the new instrument. The Secretariat underlined that the DNI contained in the documents under consideration would have the same contents whether it would take the form of a revised Lisbon Agreement or whether it would take the form of a new treaty. The Secretariat pointed out nonetheless that once the new system would be in place, there would be two systems operating in parallel for a certain time, namely, one for the members of the Lisbon Agreement which would not have acceded to the new instrument, and another one not only for those countries which would have acceded to the new instrument without perhaps having acceded to the Lisbon Agreement but also for those countries who would have acceded to both treaties. The Secretariat said that WIPO was familiar with that type of situation as it already existed under the Madrid and Hague systems and added that it was implicit in the DNI under consideration that the operation of the Lisbon Agreement would become part of the operations of the new system, which in turn meant that in respect of the Regulations, for example, at some point there would be a need to establish Common Regulations. Costs involved would be comparable to the costs of running the Lisbon system today.

51. The Delegation of Italy suggested that the notion of “protection” be introduced between brackets in Article 1 of the DNI, along the lines of the current wording of Article 1(2) of the Lisbon Agreement, so that the new sentence would more or less read “The Contracting Parties undertake to protect on their territories…”.

52. The Chair indicated that such a provision was contained in Article 5(1) of the DNI.

53. The Delegation of Hungary sought clarification as to why the formulation of the sentence in Article 1(2) slightly differed from the corresponding provision in the Singapore on the Law of Trademarks Treaty, in particular as regards the reference to the Paris Convention. Article 15 of the Singapore on the Law of Trademarks Treaty only referred to the provisions of the Paris Convention which concern marks, while Article 1(2) of the DNI referred to the Paris Convention as a whole.

54. The Representative of INTA noted some degree of inconsistency between Article 1(1) and Article 1(2). As regards the first paragraph he pointed out that, irrespective of the legal form of the DNI, the members of such new instrument would become members of a Special Union following the provisions under Options A and B in accordance with Article 19 of the Paris Convention. He noted, however, that if the members of the new instrument were to constitute a Special Union under Article 19 of the Paris Convention, they would obviously have to be members of the Paris Convention and would therefore have to apply the relevant provisions of the Paris Convention. However, if the intention were to open the new instrument to countries or organizations that were not party to the Paris Convention, as in the case of the Singapore on the Law of Trademarks Treaty, then those entities should not be referred to as members of a Special Union under the Paris Convention. He was of the view that it was either one or the other, in other words either Article 1(2) was redundant if Article 1(1) was correct, or the latter would have to be amended so as to allow membership by any member of WIPO as it was the case under the Singapore on the Law of Trademarks Treaty.

55. The Delegation of Switzerland expressed support for the statement of the Representative of INTA.

56. The Delegation of Romania was of the view that the Paris Convention had to be mentioned in the text of the DNI, as that Convention was the bible of industrial property. The Delegation also fully agreed with the suggestion to add the notion of “protection” in the title of the DNI.

57. As regards the addition of the notion of “protection” in the title of the DNI the Secretariat was of the view that, at the end of the day, that would depend on what the new instrument would say on the scope of protection, and also to what extent the addition of such “term” would be objected to by current non-member States of the Lisbon Agreement. The Secretariat further explained that Article 1(2) had been added following the comment made by the Representative of CEIPI at the previous session of the Working Group, that, in the Geneva Act of the Hague Agreement, the possibility for accession by any WIPO Member State was accompanied by a provision requiring compliance with the provisions of the Paris Convention concerning industrial designs.

58. The Delegation of Iran (Islamic Republic of) observed that if it was indeed required that the member States of the new Agreement applied certain provisions of the Paris Convention it would be preferable to specifically mention those provisions, along the lines of the Singapore on the Law of Trademarks Treaty. On the contrary, if member States were instead asked to comply with all the provisions of the Paris Convention then logically the membership of the new instrument could be limited to those who were already members of the Paris Convention.

59. The Chair wondered whether the model of the Singapore on the Law of Trademarks Treaty could be followed in that respect to avoid giving the wrong impression that for a Contracting Party to become a member of the DNI there would be an obligation to apply the provisions of the Paris Convention not only with respect to geographical indications but also with respect to patents or designs for example. However, he also pointed out that in the case of the Singapore on the Law of Trademarks Treaty, the situation was clearer as the treaty only related to trademarks. He added that the Paris Convention did not explicitly refer to geographical indications but to appellations of origin and indications of source, and that it also contained provisions on trademarks and unfair competition. He therefore wondered how the scope or the content of the applicable provisions of the Paris Convention, with which a Contracting Party would have to comply, could be delimited. The Chair nonetheless indicated that additional thought could be given to the idea of coming up with a text that would more or less follow the provisions of Article 15 of the Singapore on the Law of Trademarks Treaty so as to state, for example, that “any Contracting Party shall comply with the provisions of the Paris Convention which concern appellations of origin and indications of source”. The Chair concluded by saying that, clearly, there was no wish to force Contracting Parties to the new instrument to comply with the provisions of the Paris Convention in respect of others forms of industrial property, such as patents.

60. The Delegation of Iran (Islamic Republic of) was of the view that it would be easier to limit the membership of the new instrument to those countries who were already members of the Paris Convention since so many aspects of the Paris Convention were correlated to the DNI.

61. The Delegation of France pointed out that the Paris Convention referred to “indications of source” which were not dealt with in the DNI, as it only referred to geographical indications and appellations of origin.

62. The Secretariat said that, if the Working Group were to go for a revision of the Lisbon Agreement, the DNI would remain within the realm of the Lisbon Agreement as a special Agreement under the Paris Convention. However, the Secretariat wondered whether WIPO as an Organization should limit the right to accede to one of its Treaties to Paris Convention countries only or whether all WIPO Member States should be allowed to accede to Treaties concluded in the context of WIPO. The Secretariat recalled that the trend in the most recent WIPO treaties was to allow any WIPO Member State to accede, for example, the Geneva Act of the Hague Agreement and the Singapore on the Law of Trademarks Treaty.

63. The Representative of INTA suggested starting with the abbreviated expressions under Article 2, which would then become Article 1, thereby transforming the current Article 1 into an Article 2. The reason for the proposed change was that the current Article 1 referred to a number of instruments which were defined later in the document.

64. As regards the need for a provision requiring application of the provisions of the Paris Convention in respect of the subject-matter of the DNI, the Secretariat referred to Article 27 of the DNI which provided for the possibility not only for States but also for IGOs to accede and pointed out that IGOs could not accede to the Paris Convention. The Secretariat recalled that, for purposes of the DNI, the structure of the Geneva Act of the Hague Agreement had been followed to a great extent, as that Act had been the last registration treaty to be concluded in the context of WIPO, including a provision requiring compliance with the provisions of the Paris Convention.

65. The Chair recalled that the Secretariat had rightly pointed out that if the accession of IGOs was envisaged, the Working Group had to bear in mind that those organizations could not accede to the Paris Convention and that, by way of consequence, a separate provision would appear to be necessary to oblige them to comply with the provisions of the Paris Convention. As to the wording of Article 1(2), the Chair was of the view that a consensus had emerged on the idea that the text of the new instrument had to avoid giving the wrong impression that all the provisions of the Paris Convention had to be complied with. In that regard, the Chair proposed the following wording “Contracting Parties shall comply with the provisions of the Paris Convention related to geographical indications and appellations of origin”, and said that in his view such flexible and general formulation would also cater for the concerns of limiting the scope of the provisions of the Paris Convention that might come into play with respect to geographical indications and appellations of origin. He also said that the text of Option A in Article 1(1) had to be verified against the existing models in the Geneva Act of the Hague Agreement and the Singapore on the Law of Trademarks Treaty.

66. The Delegation of Switzerland suggested that all the provisions of the Paris Convention that should be applied in the protection of geographical indications and appellations of origin be enumerated.

67. The Chair was of the view that it would be difficult to come up with an exhaustive list of provisions of the Paris Convention that would have to be complied with by Contracting Parties to the DNI.

68. Since IGOs could not accede to the Paris Convention, the Delegation of the European Union said that it would be rather reluctant to accept the current broad formulation of Article 1(2) because the European Union *acquis* did not cover all the elements of the Paris Convention. The Delegation therefore supported the suggestion made by the Delegation of Switzerland to specifically list those provisions in the Paris Convention having a link with the protection of geographical indications and appellations of origin.

69. With regard to the last proposal as to how the drafting or Article 1(2) could be resolved, the Delegation of Peru said that it was under the impression that the Paris Convention referred to indications of source and not to geographical indications and sought further clarification from the Secretariat in that regard.

70. As regards the intervention made by the Delegation of the European Union, the Chair said that the Singapore on the Law of Trademarks Treaty, which also foresaw the accession of IGOs such as the European Union, did not contain an exhaustive list of provisions of the Paris Convention which had to be complied with by Contracting Parties either, instead, it only

contained a general reference to provisions of the Paris Convention which concerned marks, which had not been objected to by the European Union at the time of adoption of the Singapore on the Law of Trademarks Treaty.

71. The Secretariat recalled that the Chair had proposed amending the wording of Article 1(2) so that the new provision would read "Contracting Parties shall comply with the provisions of the Paris Convention related to geographical indications or appellations of origin", and emphasized the use of the terms "related to" instead of "provisions dealing with" in the proposed wording. In that connection, the Secretariat wished to recall that the TRIPS Agreement required WTO members to comply with the substantive provisions of the Paris Convention and, more specifically, pointed out that the section on geographical indications of the TRIPS Agreement required geographical indications to be protected against acts of unfair competition under Article 10*bis* of the Paris Convention. As the Delegation of Peru had correctly pointed out, the words "geographical indications" were not mentioned in the Paris Convention. However, the Paris Convention did have provisions on appellations of origin and recalled that appellations of origin were presented in the DNI as a subcategory of geographical indications. Use of the words "related to" would allow geographical indications to be covered as well.

72. The Delegation of the European Union said that a reference to provisions "related to" geographical indications or appellations of origin could certainly be considered as well, but added that it was still of the view that an exhaustive list of provisions would be more appropriate for the sake of legal certainty.

73. As regards the suggestion that a listing of the relevant articles of the Paris Convention might be preferable, the Secretariat suggested postponing the discussion until after Article 5(5) of the DNI had been discussed. As that provision stated that the protection to be provided under the DNI could be provided either by *sui generis* legislation or trademark legislation. In other words, listing the provisions of the Paris Convention would require inclusion also of the provisions concerning trademarks.

74. The Representative of ECTA wondered why in Article 1(1) reference was made to the "*Union for the Protection of Industrial Property*", while in Article 1(2) reference was made to the Paris Convention, and therefore expressed the view that it might be preferable to use the same terminology in both paragraphs of Article 1.

75. As regards Article 2(iv), the Delegations of Hungary and Romania said that this provision could simply be deleted, as it was self-evident.

76. For greater consistency, the Delegation of Romania suggested following a different structure in Article 2 to better reflect the importance of each abbreviated expression, starting first with the "Lisbon Agreement" for example.

77. As regards the structure of Article 2, the Chair clarified that the Secretariat had followed the alphabetical order in the English version which was probably not apparent in the other language versions.

78. As regards the notions of "good" and "product", the Representative of ECTA pointed out that the definition in Article 5(3) referred to "good" whereas the definition in Article 5(4) referred to "product". In consequence, for the sake of clarity, he suggested adding a footnote stating that the terms "good" and "product" would be the same for purposes of the new instrument. Furthermore, as regards the word "beneficiary", he noted that such term only appeared once in Article 7(4) of the new instrument, while the expression "holder of the right to use" was used elsewhere. In light of the definition of "beneficiary" in Article 7(4), the Representative of ECTA suggested using the term "beneficiary" throughout the DNI instead of "holder of the right to use", all the more so as he was not even sure that the notion of "holder of the right to use" would be

appropriate in the context of the new instrument, specially if the objective was to attract countries which did not have appellations of origin or geographical indications but which only used certification trademarks. In that regard, he pointed out that in some countries the owner of the certification trademark was not allowed to use the mark himself but only to allow others to use it, and therefore suggested replacing the “right to use” by a “right to implement”.

79. The Secretariat agreed with the Delegation of Romania to group the abbreviated expressions differently in Article 2, as the alphabetical order did not work the same in each language version. The proposals made by the Representative of ECTA concerning the use of the terms “good” and “product” throughout the DNI and the use of the word “beneficiaries” required further reflection.

80. The Chair said that any explanation given in respect of the use of the terms “good” and “product” in the course of the discussions would be part of the *travaux préparatoires* of the new instrument, but should probably not feature in the DNI itself. Use of the term “beneficiaries” had probably better be taken up in the context of Article 7 of the DNI.

81. Regarding Article 2(xxiii), the Delegations of France and Switzerland expressed doubts about the actual scope of this provision, as it seemed to mean that the word in plural “*enregistrés*” in French would have the same meaning as the singular “*enregistrée*”.

82. The Chair said that the provision might be retained, if it would specify that terms such as, for instance, “holder” may indicate the singular or the plural.

83. The Delegation of Switzerland suggested to move the current Article 2 of the DNI to the DR, and to insert at the beginning of the DNI an article containing the basic definitions such as geographical indications, appellations of origin or Contracting Party of Origin, for example.

84. The Chair said that it would be awkward to define in a secondary piece of legislation concepts used in a primary piece of legislation. The abbreviated expressions in the current Lisbon Regulations only dealt with expressions used in those Regulations.

85. Several delegations supported the Swiss proposal to have an article containing the definitions at the very beginning of the DNI. This would help clarifying the issues addressed in the DNI as well as the scope of the new instrument, while it would also allow for a much clearer version of Article 5. The delegations expressed the view that it was odd that the necessary information concerning geographical indications and appellations of origin was not specified until Article 5(3) and Article 5(4).

86. Although it would certainly not be a problem to introduce a separate article defining the basic concepts at the very beginning of the DNI, the Secretariat, nevertheless, wished to explain the reasoning behind the current structure of Article 5. Article 5 of the DNI was structured along the lines of Articles 1 and 2 of the Lisbon Agreement, which started with an obligation to protect what had been registered on the basis of a title of protection granted in the country of origin before dealing with the definitions themselves and the requirements on the content of protection at the national level. The Secretariat said that, in discussions with non-Lisbon countries about their possible accession to the Lisbon Agreement, it was very often confronted with the view that a country could not accede because it did not have *sui generis* legislation for the protection of appellations of origin, but instead protected geographical indications through certification marks, for example. This was an unfortunate misunderstanding. China, for example, had a trademark law which included protection for geographical indications through certification marks, but such protection was based on a definition for geographical indications which read practically the same as the definition of an appellation of origin under the Lisbon Agreement. Would this prevent China from acceding to the Lisbon Agreement and register such geographical

indications under the Lisbon Agreement? Paragraphs (3) and (4) of Article 5 were immediately followed by paragraph (5) in order to provide the necessary clarification on this issue. Dissociating the provisions in question would necessitate another way to address the issue.

87. The Delegation of the European Union stressed the need for coherence between Article 2 and Article 5, which would also lead to simplification and clarity of the provisions in question. For example, referring to the definition of "geographical area of origin" in Article 2(ix), which read "the geographical area referred to in Article 5(3) or Article 5(4) to which a geographical indication or an appellation of origin refers", the Delegation pointed out that Article 5(3) and Article 5(4) not only referred to "geographical area" or "geographical area of origin" but also to "geographical environment". In that regard, the Delegation was of the view that the actual object or scope of the abbreviation "geographical area of origin" was not clear and therefore, as a possible solution, the Delegation suggested defining "geographical area of origin" either in Article 2 or in Article 5 of the DNI, or to use the same wording in Article 2 and Article 5. Furthermore, the Delegation was of the view that Article 2(xxi) which defined a trans-border geographical area of origin had to be slightly amended so that the text would read "a continuous geographical area of origin situated in more than one Contracting Party of Origin".

88. As regards Article 2(vi) which referred to "Contracting Party", the Delegation of Peru said that under Peruvian legislation, it was not possible to protect appellations of origin submitted by IGOs because that would imply the protection of appellations of origin of third countries. The Delegation added that such principle was part of the Andean Community covenant which covered Bolivia, Colombia, Ecuador and Peru.

89. The Delegation of Costa Rica shared the views expressed by the Delegation of Peru with regard to Article 2(vi) which stated that IGOs might also be parties to the Agreement. In that regard, the Delegation specified that under its national legislation only Contracting Parties and not IGOs could undertake international registrations for the protection of geographical indications or appellations of origin.

90. The Chair recalled that one of the main objectives of the review of the Lisbon system was to open up the system to the accession of IGOs, and in that respect, the new instrument simply followed the unanimous will of the Working Group to make it possible for IGOs to become members of the Lisbon system.

91. The Delegation of France said that it failed to understand the comments made by the Delegations of Costa Rica and Peru about the link that might exist between the Agreement, whatever its form, and their national Regulations. It was the understanding of the Delegation that the Agreement was a harmonization instrument on a given number of items and therefore did not understand why new issues would arise with the introduction of IGOs, such as the absence of a provision in the national legislation that would allow IGOs to request registrations of geographical indications or appellations of origin. The Delegation was of the view that if the new international instrument or Agreement provided for such possibility any request made by an IGO would be in compliance with the Agreement, and the States wouldn't have to re-appreciate such demands in the light of their national legislations, otherwise the Working Group would have missed one of the objectives of the present review exercise. The Delegation concluded by saying that it was the national legislation that had to be adapted to any new international Agreement rather than the opposite.

92. Without addressing the complex issue as to how international Agreements would have to be implemented in the internal legislation of States or IGOs, it was the understanding of the Chair that once a State or an IGO acceded to the DNI, it was just natural that such a State or IGO would be bound to give full effect to the provisions of such new instrument, either through

the adaptation of its internal legislation to the provisions of the Agreement if there was any conflict between them, or by giving precedence to the international Agreement over any conflicting national provision.

93. The Delegation of Peru pointed out that in the specific case of Peru the Delegation did not refer to a national regulation but to a regional one which was binding for several countries. In that regard, the Delegation presumed that any modification or revision of the Lisbon Agreement would require prior arrangements at the regional level because the other three countries of the Andean Community were not members of the Lisbon Agreement. In other words, something would have to be modified along the way for Peru to be able to subscribe to the new instrument and to fully implement its provisions.

ARTICLE 3 AND RULE 4: COMPETENT AUTHORITY

94. Referring to the legal remedies in Article 14, and in particular to the possibility that was envisaged for those remedies to be activated either *ex officio* or by Contracting Parties, the Delegation of Italy wondered whether Article 3 would help interested parties in identifying the national authority to which a complaint regarding the protection of their geographical indications or appellations of origin might be addressed.

ARTICLE 4: INTERNATIONAL REGISTER

95. The Delegation of Peru suggested renaming the DNI "*International Register on Appellations of Origin and Geographical Indications*" to recall the spirit of the current Lisbon Agreement. For the sake of coherence with such proposal, the Delegation was of the view that Part A of the Register should only concern appellations of origin, whereas Part B would be the new Register that would emerge from the present exercise and would strictly concern geographical indications.

96. The Secretariat clarified that the suggestion to have geographical indications in Part A of the Register was that the DNI presented geographical indications as the *genus*, while appellations of origin were presented as species under that *genus*. The Secretariat pointed out that, if the Working Group would decide to follow the proposal made by the Delegation of Peru, there would be a Register for the Lisbon Agreement and a Register for the DNI which would contain both geographical indications and appellations of origin. In other words, there would be two Registers containing appellations of origin.

97. As regards Article 4, the Delegation of Switzerland sought further clarification on the link between the new Register and the existing one under Lisbon. In the eventuality of a revision of the Lisbon Agreement, the understanding of the Delegation was that the existing Register for appellations of origin would be taken up in the revision of Lisbon, but, if there would be two independent instruments, the Delegation wondered how the existing Register could be incorporated into the new instrument, unless all Lisbon Contracting Parties would also become members of the DNI. The Delegation also wondered whether the proposed division of the Register in two Parts, A and B, would be really useful. Would a uniform Register with a simple description indicating whether the registration concerned an appellation of origin or a geographical indication not suffice, especially if the same level of protection was granted to both?

98. The Delegation of Spain wondered what the feasibility or operability of splitting the Register into two would be, in particular given the practical implications that such a division would have in terms of informing consumers of a stronger or weaker link between the product and its geographical environment.

99. The Delegation of Costa Rica did not consider it necessary to divide the International Register into a Part A and a Part B, since both titles of protection would have the same legal value. In any event, the Delegation suggested moving Article 4(2) to the DR as it considered the division between a Part A and a Part B more as an internal administrative matter for the International Bureau.

100. The Representative of ECTA pointed out that Article 5(2) specified that, under certain circumstances, it would be possible to file for the same product or for the same word an appellation of origin and a geographical indication. In consequence, he was of the view that a single Register would be preferable because otherwise the same word would appear twice on two separate Registers, and when one Register would be consulted it would not be possible to know that the same word had also been registered in the second Register.

101. The Delegations of France, Italy and the Republic of Moldova expressed their preference for a single Register.

102. In view of the comments made, the Secretariat was of the view that a possible way to reflect the suggestions made by various delegations would be to put Article 4(2) between brackets, which in turn would help establish symmetry with the brackets in Article 10 of the DNI. The Secretariat pointed out that if Article 4(2) disappeared altogether, Article 4(1) would still require that a Register for geographical indications and appellations of origin be maintained. For the reasons explained in Rule 7(1), the Secretariat added that it would be useful to indicate in the Register whether something was protected as a geographical indication or as an appellation of origin, because under the new instrument some countries may apply for a geographical indication and for an appellation of origin at the same time. Moreover, the Secretariat also pointed out that if all appellations of origin registered under the new instrument would be protected as appellations of origin in countries which also had appellation of origin protection, and as geographical indications in countries which did not have appellations of origin but only geographical indications, it would be important for the members of the public that would consult the International Register to see in such Register whether something was either protected as a geographical indication or as an appellation of origin in a particular Contracting Party. As regards the question on how to incorporate the Register of the Lisbon Agreement into the Register of the new instrument, the Secretariat referred to the experience that the International Bureau had in that regard in the context of both the Madrid system and the Hague system.

103. In conclusion, the Chair said that there seemed to be a general Agreement to put Article 4(2) between brackets. He added that the choice between a single Register, two Registers or a Register with two Parts, would largely depend on the outcome of the discussion on other provisions of the DNI.

ARTICLES 5 AND 10: PROTECTION OF REGISTERED GEOGRAPHICAL INDICATIONS AND APPELLATIONS OF ORIGIN AND PROTECTION ACCORDED BY INTERNATIONAL REGISTRATION

104. The Working Group first took up Article 5(3) and Article 5(4), before discussing the remainder of Article 5 and the whole of Article 10.

105. The Secretariat introduced Article 5(3) and Article 5(4) along the lines of the Notes on these provisions contained in document LI/WG/DEV/5/4.

106. The Delegation of the European Union was of the view that the provisions in Article 5(3)(b) were already covered by the definition of geographical indication under Article 5(3)(a) as the term “indication” implicitly covered non geographical names, whereas, in

the case of appellations of origin, it was not clear whether “denominations” were limited or not to geographical names such as “*Porto*”. The Delegation was therefore of the view that the provision of Article 5(3)(b) should be moved to Article 5(4) to open up the possibility of the protection of terms such as “*Reblochon*” which were not geographical names. Furthermore, the Delegation considered the current wording of Article 5(3)(c) which required a delimitation of the trans-border area by common legislation, as being too narrow.

107. The Delegation of Switzerland highlighted a potential problem in the formulation of the definition of geographical indication in Article 5(3)(a) which read “identifies a good as originating in a geographical area situated in a Contracting Party”, whereas the TRIPS definition specified “as originating from the territory of a Contracting Party or an area”. In that regard, the Delegation expressed the view that the difference between those two definitions should not be construed so as to imply that the geographical area of origin had to be smaller than the territory of a country. The Delegation further pointed out that there were very small countries where it might be necessary to recognize the geographical indication for the entire territory of the country.

108. Along the lines of the comment made by the Delegation of Switzerland, the Representative of ABPI pointed out that since the “*Cachaça*” areas were not located in just one geographical area the term “*Cachaça*” was an indication which identified a product which came from Brazil as a whole.

109. The Delegation of Italy supported the statements made by the Delegations of the European Union and Switzerland. Further, the Delegation sought confirmation that the term “denomination” in Article 5(4) also included the “country of origin” concept under Article 2(2) of the Lisbon Agreement.

110. The Delegation of France said that it had understood from the Secretariat’s explanation that, in view of the phrase “an appellation of origin means a geographical indication…” in Article 5(4), paragraph (b) of Article 5(3) was also applicable under the definition of “appellation of origin”. The Delegation, however, sought clarification as to why the text referred to “an indication” in the case of geographical indications, whereas reference was made to a “denomination” in the case of appellations of origin. The Delegation also sought clarification of the actual meaning of the terms “common legislation of those Contracting Parties” in Article 5(3)(c), and more particularly what kind of common legislation the text referred to: legislation governing production issues or legislation establishing a common system for the protection of appellations of origin or geographical indications. Lastly, as regards Article 5(4)(i), the Delegation reiterated its preference for a cumulative requirement, so that the option retained would be “natural and human factors”.

111. The Delegation of Hungary expressed the view that the use of the term “common legislation” in Article 5(3)(c) might limit the options of Contracting Parties with respect to international filings depending on the interpretation that would be given to that term.

112. The Delegation of Iran (Islamic Republic of) sought further clarification on Article 5(3)(c) through the provision of concrete examples. As regards Article 5(4)(i), the Delegation suggested adding “or traditionally known to be” in the second line right after “are due”.

113. The Representative of ORIGIN expressed the view that since the broad concept of geographical indication was also included in the DNI, it did not appear necessary to restrict the definition of appellation or origin in Article 5(4)(i) through the inclusion of “and/or” and therefore suggested to keep the cumulative requirements in the definition.

114. The Delegation of Algeria expressed the view that the wording “which has given the product its reputation” in Article 5(4)(ii) was not objective, in particular with regard to the quality and the human factor requirements. The Delegation therefore suggested adding the terms “and which is recognized by the Contracting Party in conformity with its own criteria and conditions for granting protection”.

115. The Delegation of Peru suggested replacing the provisions of Article 5(4) by the definition of Article 2 of the Lisbon Agreement, which also implied the use of the cumulative term “and” in “natural and human factors”.

116. The Representative of INTA also wondered whether it would not be the easiest and most coherent approach to maintain the appellation of origin definition provided in Article 2 of the Lisbon Agreement, especially if such definition was combined with a broad definition of geographical indications that would give the possibility to register certain terms as geographical indications.

117. The Delegation of the Republic of Moldova suggested replacing the term “good” by “product” in the English version of the definition of geographical indication to use the same terminology in both definitions.

118. The Delegation of Switzerland said that it still had difficulties in considering appellations of origin as a subcategory of geographical indications and therefore suggested defining both categories separately. In addition, the Delegation supported the use of the cumulative formula “natural and human factors” in the appellation of origin definition given that the introduction of the notion of geographical indication would make it possible for all indications and appellations which did not correspond to the definition of appellation of origin to be otherwise registered as geographical indications, thereby benefiting from the same protection should a single level of protection be retained.

119. As regards Article 5(4)(i), the Delegation of Iran (Islamic Republic of) reiterated its preference for using alternative and not cumulative factors in the appellation of origin definition, contrary to the views expressed by other delegations. With respect to Article 5(3)(b), the Delegation was of the view that there was no point in moving subparagraph (b) of Article 5(3) to Article 5(4) if the general views were both that appellations of origin were a sub-category of geographical indications.

120. As regards Article 5(3)(b) which dealt with indications that were not strictly speaking geographical, the Secretariat referred to Note 5.03 in the “Notes on the DNI” in document LI/WG/DEV/5/4 which stated that the aim of paragraph (3)(b) of Article 5 was “to make it clear that international protection as a geographical indication or an appellation of origin is also available for indications that are not strictly speaking geographical, but which have obtained a geographical connotation”. In that regard, the Secretariat pointed out that such possibility also existed under the Lisbon Agreement and recalled that the Lisbon Union Council had decided in 1970 that terms which were not geographical but which had acquired a geographical meaning could also be registered under the Lisbon Agreement. The Secretariat added that several registrations as appellations of origin of such non geographical terms had already taken place under the Lisbon system, for example in the case of “*Reblochon*”. The Secretariat therefore suggested to keep the text as currently drafted in the DNI if there was a common view that both geographical indications and appellations of origin could consist of terms which would not be strictly speaking geographical or, on the contrary, if delegations feared that the current text might be interpreted as meaning that the TRIPS definition did not incorporate non geographical terms, an explicit clarification that such provision would have the same meaning as Article 22.1 of the TRIPS Agreement could certainly be inserted in a footnote.

121. With regard to Article 5(3)(c), and in particular the term “common legislation”, the Secretariat clarified that the idea was to limit the requirement to common legislation under which the geographical area of origin was delimited. The Secretariat further clarified that it was specifically referring to trans-border areas and to the procedures for submitting applications for geographical indications and appellations of origin from trans-border areas under Article 7(5), which specified that, in case of a trans-border geographical area of origin, the Contracting Parties concerned had the option either to each file an application as a Contracting Party of Origin – in respect of that part of the geographical area situated in its territory –, or to file an application jointly – acting as a single Contracting Party of Origin. The second Option obviously implied some form of prior understanding between them as to what the requirements were for the production of the product referred to by a common geographical indication or appellation of origin – that was precisely the idea behind the notion of “delimited under common legislation”. A third Option contained in Article 7(5) was to allow direct applications by interested parties.

122. The Secretariat further indicated that the definitions under the TRIPS Agreement and under the Lisbon Agreement could not be followed literally, because the DNI had to deal with certain new aspects, such as the incorporation of the notion of “reputation” in the appellation of origin definition, the addition of new provisions catering for trans-border geographical areas of origin, and the extension of the concept of Country of Origin to include IGOs.

123. Referring to the comment made by the Delegation of Switzerland that the wording “geographical area situated in a Contracting Party” may not include strictly speaking the territory of the Contracting Party as a whole, the Secretariat was of the view that this depended on the interpretation given to “situated in” and, for the sake of clarity, suggested, as a possible solution, to use the phrase “consisting of or situated in”. Finally, the Secretariat sought explanation of the suggestion made by the Delegation of Algeria with respect to Article 5(4)(ii) and from the Delegation of Switzerland as to what the reasons were for having two separate and independent definitions for geographical indications and appellations of origin.

124. The Delegation of Switzerland recalled that there had been a fairly extensive debate on the questions connected to the inclusion of a geographical indication definition in the DNI and the relationship between the two definitions for purposes of accurately reflecting the specificities of geographical indications and appellations of origin, without faithfully reproducing the relevant TRIPS or Lisbon definitions. In that regard, the Delegation thought that it would be logical to make those definitions independent to try and emerge from the deadlock. In that connection, the Delegation sought clarification from the Secretariat as to why it deemed necessary to have the appellation of origin definition depend on the geographical indication definition. As to the way in which those two definitions could be drafted, the Delegation was of the view that they just needed to reproduce the existing TRIPS and Lisbon definitions and add the new elements that had already been discussed, such as the inclusion of a specific indication that non-geographical terms could also be registered as appellations of origin.

125. The Delegation of the European Union supported the proposal made by the Delegation of Switzerland to have two separate definitions for geographical indications and appellations of origin that would not be dependent on each other, as that would simplify the task of defining such terms. In that regard, the Delegation noted that Article 5(3)(a) which defined geographical indications incorporated the notion of “reputation” as one of the elements to be taken into account, whereas the same term “reputation” was used again in a different context in the definition of appellation of origin in Article 5(4), which might be considered redundant if appellations of origin were indeed a subcategory of geographical indications.

126. The Representative of INTA said that the concern expressed by the Delegation of Algeria would appear to be to link the element of reputation of the product to the protection criteria used in the definition, and therefore suggested adding the word “and” between subparagraphs (i) and (ii) of Article 5(4), to make it clear that the provisions in question were not alternative but cumulative.

127. The Delegation of Algeria said that its main concern was to link the notion of reputation to the criteria used for giving such reputation to the product.

128. The Chair said that he had been unable to fully grasp the suggestion made by the Delegation of Algeria and, in particular, whether the Delegation wished to subject the criterion of reputation to individual recognition by all Contracting Parties. The Chair recalled that under the existing refusal procedure Contracting Parties were free to refuse the effects of an international registration if they were of the view that a particular appellation of origin did not comply with the definition requirements, including the reputation element. In that regard, the Chair said that he did not see the need to insert in the definition provision any additional element because each time a registration was notified to the Contracting Parties, they were in a position to refuse the effects of a given international registration, for example, on the grounds that in their view the definition requirements, including the reputation element, of the appellation of origin were not met. The Chair nonetheless said that perhaps the word “and” could be added to establish a link between subparagraphs (i) and (ii) of Article 5(4), as suggested by the Representative of INTA, as that would make it clear that both elements were cumulative.

129. The Delegation of Algeria said that the current wording of Article 5(4) established a difference between subparagraphs (i) and (ii) and, therefore, was of the view that the appellation of origin had to be defined as being the denomination of the product which had given the product its reputation together with the additional wording it had proposed, namely “and which is recognized by the Contracting Party pursuant to the conditions and criteria for granting protection”.

130. The Chair reiterated that by adding the word “and” between subparagraphs (i) and (ii), it would be clear that, in order to qualify as an appellation of origin, a denomination had to meet all the criteria contained in subparagraphs (i) and (ii).

131. The Secretariat said that the proposal made by the Delegation of Algeria seemed to relate to the linkage which existed implicitly between Article 2(2) and Article 1(2) of the Lisbon Agreement which required Lisbon countries to protect appellations of origin of products of the other countries of the Union which had been recognized and protected as such in the country of origin. In any event, the Secretariat was also of the view that the addition of “and” between subparagraphs (1) and (2) would suffice.

132. The Delegations of the European Union, France and Italy agreed that the proposed addition of the term “and” to signal the cumulative character of subparagraphs (i) and (ii) would make the text clearer.

133. For the sake of simplification, the Representative of ECTA suggested merging subparagraphs (i) and (ii) into one by adding at the end of the current subparagraph (i) the terms “and which have given the product its reputation”.

134. The Representative of ABPI pointed out a difference between the French and English versions of the DNI in Article 5(3)(a) given that two different terms were used in the French version, namely “*réputation*” and “*notoriété*”, while the term “reputation” was the only one used in the English version.

135. The Secretariat clarified that the French and English versions had been drafted along those lines to stay as closely as possible to the definitions of the TRIPS Agreement and the Lisbon Agreement. In that regard, the Secretariat specified that Article 2(2) of the Lisbon Agreement mentioned the word "*notoriété*" in the French version and "reputation" in the English one, whereas the TRIPS Agreement referred to "reputation".

136. The Working Group then turned to the remainder of Article 5 and the whole of Article 10.

137. The Secretariat introduced the provisions in question along the lines of the Notes contained in document LI/WG/DEV/5/4.

138. The Delegation of France said that Article 5 and Article 10 both concerned the protection of geographical indications and appellations of origin and, therefore, suggested to merge the two articles. Furthermore, paragraphs (1) and (2) of Article 5 could also be merged, so as to read for example: "Each Contracting Party shall protect on its territory, in accordance with the terms of this Agreement, the appellations of origin and geographical indications registered at the International Bureau". In addition, the Delegation indicated that it still found it difficult to fully grasp the scope of Article 5 which, on the one hand, contained provisions dealing with the protection of geographical indications and appellations of origin registered within the framework of the DNI on the basis of the protection granted in the Contracting Party of Origin; and, on the other hand, provisions dealing with the protection to be accorded by the other Contracting Parties in respect of the geographical indications and appellations of origin registered at the International Bureau. The Delegation expressed some reservations concerning the proposed wording of Article 5(5), which would allow for protection by, for example, *sui generis* legislation or trademark legislation, as that would, in its view, mean that Contracting Parties would have to seek trademark registrations of their geographical indications and appellations of origin in certain jurisdictions. Consequently, the DNI would not harmonize the protection rules at the international level. With regard to Article 10, the Delegation restated its preference for a single level of protection for geographical indications and appellations of origin.

139. The Delegation of the Republic of Moldova expressed its support for a single level of protection for both geographical indications and appellations of origin. The Delegation further suggested that the applicability of the treaty be extended to certification and collective marks by reformulating the provisions concerning the obligation to protect geographical indications and appellations of origin.

140. The Delegation of Italy expressed its preference for a simplified structure with only one article with a general reference to the Contracting Parties' obligation to protect registered appellation of origins and geographical indications in their territory, and then a separate description of the scope of protection. Moreover, the Delegation restated its preference for a single, ambitious level of protection for both geographical indications and appellations of origin, recalling its previous objections that having two separate levels of protection might create asymmetries. The Delegation further recalled the mandate of the Working Group to make the existing system more attractive while also maintaining the principles and objectives of the current Lisbon Agreement which strived to harmonize protection. Referring to the misconception that a high level of protection would not make the system more attractive, the Delegation expressed the view that since the protection of geographical indications and appellations of origin stemmed from traditional and territorial features of protection, a high level of protection would be a powerful instrument for the promotion of products, particularly by small and medium sized enterprises in developed and developing countries as it would confer those businesses a better access to international markets.

141. The Delegation of the European Union expressed its support for the proposed protection of geographical indications along the lines of Article 22.1 of the TRIPS Agreement, and of appellations of origin along the lines of the current definition of Article 2 of the Lisbon

Agreement. The Delegation also expressed the view that Articles 5(1), 5(2) and 5(5) had to be brought in line with Article 10 dealing with the protection accorded by international registration. With regard to Article 10(1), the Delegation stated its preference for Option B, which foresaw identical protection for registered geographical indications and appellations of origin. With regard to Article 5(5) which laid down the freedom to determine the form of legal protection, the Delegation was of the view that trademark legislation might not be adequate for the protection of appellations of origin, which required a strong link between the quality or characteristics of the product and its geographical origin.

142. The Delegation of Portugal restated its preference for a single level of protection for geographical indications and appellations of origin and also stressed the need to be ambitious both to attract more countries but also to create a powerful instrument that would ensure a high level of protection, while also maintaining the principles and objectives of the Lisbon Agreement. Lastly, the Delegation requested some clarification on the reasoning behind the difference between the phrases “any direct or indirect use” in the case of appellations of origin in Article 10(2)(a)(i), and “any direct or indirect commercial use” as regards both geographical indications and appellations of origin in Article 10(2)(a)(ii). Finally, the Delegation pointed out that the bracketed phrase “[geographical indication or]” had been omitted in Article 10(2)(a)(i).

143. Referring to Option A in Article 5(2)(b), the Delegation of Hungary sought clarification on the practical consequences that would ensue if a country which initially provided protection for both geographical indications and appellations of origin decided to issue a declaration along the lines of Option A a few years after its accession to the DNI, and more particularly wondered what effect such a declaration might have on the protection previously granted to registered geographical indications and appellations of origin.

144. The Delegation of Peru also favored a similar level of protection for both geographical indications and appellations of origin. As regards the obligation to protect registered appellations of origin under Article 5(2), the Delegation indicated its preference for Option B, while also expressing some concern on the equivalence of the protection that would be provided by countries which protected geographical indications or appellations of origin under trademark legislation, as provided for in Article 5(5).

145. The Delegation of Spain expressed support for a single level of protection for both geographical indications and appellations of origin. As regards Article 10, for the sake of simplification, the Delegation suggested that the first paragraph be deleted altogether and that the terms “Content of Protection” instead of “Appellations of Origin” be used in the subtitle of the second paragraph.

146. The Delegation of Switzerland sought further clarification regarding the structure of Articles 5 and 10, while also expressing the view that those articles should perhaps be merged. As regards the level of protection, the Delegation said that the DNI should provide for harmonized protection for geographical indications and appellations of origin and agreed with the statement made by the Delegation of Italy that a high level of protection would not run counter to the objective of making the Agreement more attractive. With regard to Options A and B in Articles 5 and 10, the Delegation was of the view that a separate option that would establish a single level of protection for both geographical indications and appellations of origin had to be introduced. In addition, the Delegation believed that protection should not be based on whether or not Contracting Parties had national or regional systems providing for geographical indications or appellations of origin. The standard of protection should be established in the Agreement independently. The Delegation also suggested that the wording on protection be changed and drafted in positive terms instead of negative terms such as the one contained in Article 5(2) and expressed support for the Delegation of the European Union on Article 5(5).

147. The Representative of ORIGIN expressed support for a single and ambitious level of protection for both geographical indications and appellations of origin, as the complexity of a system based on two levels would not help in terms of the predictability and transparency of the system. He also expressed support for a stand-alone article that would deal with international protection. The Delegation sought clarification on the date from which protection would be granted under Article 10(1), while also expressing concern that, if Contracting Parties would be obliged to grant protection "from the date of international registration", subject to the one year period for refusal, developing countries might not find such a provision appealing as they might be overloaded with applications that they would have to protect from the very beginning. In that regard, the Delegation said that the different legal systems, as well as the needs of developing countries, also had to be taken into account in the formulation of such a provision.

148. The Delegation of Romania expressed support for a single and high level of protection, keeping in mind the spirit of the Lisbon Agreement, and added that it also shared the views of the Delegation of Switzerland as regards the negative wording used in the text.

149. The Delegation of Costa Rica agreed with the suggestion to simplify the text of Article 5 and stated that a single level of protection would be appropriate. Moreover, the Delegation was of the view that the drafting of Article 5 did not match with Article 10, as Article 5 referred to the protection of geographical indications and appellations of origin in a general way, whereas Article 10 only referred to the effects of international registration.

150. As regards Article 10(1), Option A, the Representative of INTA suggested that delegations give further thought to the concept of national treatment. She further recalled that the Representative of INTA had suggested the adoption of a Madrid-like system, as that might contribute to making the system more attractive to non-members. With respect to Article 10(2), she suggested introducing some trademark law type of language to make the system easier to apply. In that regard, she recalled that the concepts under trademark law were much easier to enforce, because trademark authorities and courts were familiar with them. On the contrary, she pointed out that the concepts contained in the current Lisbon system were far more difficult to apply and added that, even within the EU system, there was considerable debate on what a concept such as "evocation" actually meant in practice. From the traders' perspective, the Representative of INTA said it would be desirable to have a system that would be as clear as possible and that the use of trademark law type of language would be advantageous if the idea was to open up the system also to countries with certification trademark systems. She further pointed out that the provision on the relationship between geographical indications and trademarks contained in Article 10(2)(b) was of considerable concern to trademark owners, since there was no explicit inclusion of the priority principle to clarify that prior trademarks may not be invalidated by later geographical indications. She also expressed the view that it was debatable whether a mere reference to the TRIPS Agreement made it entirely clear whether the provision in question applied to prior trademarks. By way of conclusion, the Representative of INTA also recalled that the priority principle was not only a matter regarding TRIPS, but that prior trademark rights had to be safeguarded in accordance with fundamental rights as guaranteed, for example, by the European Court of Human Rights.

151. The Delegation of Peru sought clarification on the rationale behind Article 10(5) on homonymy.

152. The Secretariat recalled that the objective of the drafting exercise was to create an international registration system that would accommodate the international registration of geographical indications from the largest possible number of WIPO Member states. The Secretariat further indicated that the DNI had been drafted on the basis of the results of the survey discussed at the second session of the Working Group, which had reflected the input received from a much larger number of delegations and interested circles than those present at the Working Group. The Secretariat further specified that the different contributions to the

survey had necessitated the preparation of a draft with various options. While the Working Group had requested the International Bureau to do this survey, so as to know the positions to be taken into account in order to have a reasonable chance of attracting a much larger membership of the Lisbon system, it was clear that the majority of the delegations at the present session were of the view that those alternative options should be deleted and that the only option that should remain was the one requiring a single and ambitious level of protection for both geographical indications and appellations of origin, even if such opinion did not tally with the results of the survey. That being so, the Secretariat suggested splitting the DNI into two draft instruments, of which one would focus on the protection of appellations of origins in the form of a proposed revision to the Lisbon Agreement, while the other would focus on the international registration of geographical indications. In this regard, the Secretariat also pointed out that the Lisbon Union Assembly might not have the authority to recommend the conclusion of the second instrument, if geographical indications would be considered not to fall within the competence of the Lisbon Union Assembly.

153. The Secretariat said that if the idea of having a single level of protection was retained, Articles 5 and 10 could certainly be merged, while Articles 5(3) and 5(4) dealing with definitions could be taken aside and put in a separate article. As regards Article 5(5), the Secretariat clarified that the provision did not state that geographical indications or appellations of origin would be protected as trademarks. The provision was meant to address the issue that there were countries that provided for the protection of geographical indications through *sui generis* geographical indication laws, while others did so through industrial property laws, through unfair competition laws or even through trademark laws. This was a matter of form and not necessarily of substance. However, unfortunately, this difference in form was used by countries to refuse protection of foreign geographical indications. The Secretariat pointed out that there might be collective and certification mark systems with a level of protection very similar to the one provided by a *sui generis* system of protection for geographical indications. The Chinese Trademark Law, for example, provided for the protection of geographical indications through certification marks but stipulated that protection as a certification mark could only be provided if the product met the requirements of a definition that was very similar to the appellation of origin definition in Article 2 of the Lisbon Agreement.

154. As regards the comment on the asymmetries that might be caused by the existence of different levels of protection, the Secretariat said that those asymmetries already existed given the different levels of protection accorded by different countries around the world, and further stressed that the fundamental question before the Working Group was whether the exercise undertaken was a harmonization exercise or an exercise aimed at the creation of an international registration system. While a harmonization exercise would appear to be the prerogative of the Standing Committee on the Law of Trademarks, Geographical Indications and Industrial Designs, it was also true that the Working Group had a mandate that called for preserving the objectives and principles of the Lisbon Agreement, which encompassed also the provisions of the Lisbon Agreement concerning the content of protection. However, The Working Group also had a mandate to create an international registration system that would be accessible to a much wider membership. In this regard, it would appear that the Working Group should be looking for a system that would be attractive to a large group of countries. In this context, the word “attractive” was used to indicate the need for a system that would attract a wider membership.

155. With regard to the comment made by the Representative of ORIGIN on the provisions on international registration in Article 10(1), the Secretariat pointed out that the text did not differ from Rule 8(3) of the Regulations under the current Lisbon Agreement. Such provision stated indeed that protection would be available from the date of international registration, subject to the provisions of the Agreement, which included refusals.

156. In reply to the concerns expressed by the Delegation of Peru regarding the rationale behind Article 10(5), the Secretariat recalled that the issue of homonymy had been addressed in the previous draft of the DNI which had merely copied the language of the TRIPS Agreement, without any specific reference to product categories. The Secretariat pointed out that that wording had caused difficulties to the Delegation of Peru and, as a result, the new proposal simply referred to the provisions of the TRIPS Agreement. In that regard, the Secretariat said that the TRIPS Agreement stipulated in Article 23.3 that homonymous geographical indications for wines were each to be protected taking into account the interests of the producers involved and of consumers. The provision should be read in conjunction with Article 22.4 of the TRIPS Agreement, which stated that geographical indications shall also be protected against a geographical indication which falsely represents to the public that the goods originate in another territory, even though the geographical indication in question may validly consist of the name of the geographical area where the products concerned have been produced since long. Even in a situation governed by Article 23.3 of the TRIPS Agreement, there could be cases where a particular country would consider one of the two homonymous geographical indications to be falsely representing that the product comes from another territory, and specified that in such a case the country in question had a right under Article 22.4 to refuse to protect such a homonymous geographical indication.

157. The Delegation of Italy expressed concern that the results of the survey would indefinitely influence the work of the Working Group, while also cautioning that big markets with certification marks and trademark laws used to protect geographical indications might not immediately jump into a Madrid-type system, given the poor success that initiatives to that effect were having in other fora. The Delegation added that existing asymmetries in protection should not be codified into an international instrument, as that would *de facto* grant them legitimacy and make them permanent. In that regard, the Delegation reiterated its desire to try to find flexibilities within a system that would provide a single and harmonized level of protection.

158. The Delegation of France said that the Working Group had reached a stage where it needed to be clear as to what direction it would take. The Delegation recalled that it had actively engaged in the discussions on the development of the Lisbon system with the objective of designing a system that would make the Lisbon Agreement more attractive, while preserving the principles and objectives of the Lisbon Agreement, and therefore hoped that the Working Group would continue to work along those lines. The Delegation stated that the mandate, thus, required the system to be attractive not only for countries to accede, but also to current member States, which meant that all should be committed to engage in a constructive dialogue. The Delegation recognized the difficulty of this task. Its comments on Article 5(5) were not meant to question the choice of countries as to the way in which they protected geographical indications and appellations of origin under their national legislations, but to express the Delegations' concern as to the consequences of their registration with the International Bureau for the other Contracting Parties. While China had a certification mark system that could be used to protect geographical indications, as explained by the Secretariat, it also had a *sui generis* system, which applied in parallel, and in competition with, the certification mark system. With regard to Article 10, the Delegation expressed the general view that its wording should be simplified.

159. The Chair noted that the discussions on Articles 5 and 10 of the DNI were, at this stage, still focusing on matters of principle. However, there seemed to be a certain form of consensus on the suggestion to split Article 5 by taking out the provisions defining geographical indications and appellations of origin and to merge the provisions on the content and scope of protection into a single article. The obviously prevailing view was that the DNI should provide for a single and unified high level of protection for both appellations of origin and geographical indications and that the ambition should be that the DNI should address questions related to the content and scope of protection.

160. The Chair went on to say that, in this regard, it was important to recall the precise mandate of the Working Group. Initially, the mandate stated that 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. On that basis, subsequently, the International Bureau had been requested to prepare draft provisions, in order for the work on the development of the Lisbon system to become more focused. Although it was confirmed that there was a need to preserve the principles and objectives of the Lisbon Agreement, it was understood that this would entail the establishment of an international registration system for not only appellations of origin but also for geographical indications. The Chair stressed the fact that the mandate had never contained a specific or explicit reference to the establishment of an international registration system for geographical indications. However, it was clear that this was implicit in the mandate. Therefore, the Chair expressed the view that the Working Group would be well advised to reflect on what the Secretariat had stated in terms of the possible direction that the Working Group's work might take. Obviously, on the basis of the comments made in this Working Group, work should continue towards a revision of the Lisbon Agreement which would include refinements to the current system and establish or maintain a high level of protection for appellations of origin. Such a revision could also result in the introduction of certain flexibilities, so as to make the system, compared to the current Lisbon system, more attractive for prospective new members. Of course, it should also include the possibility of accession by intergovernmental organizations. However, whether such a revision of the Lisbon Agreement could also include provisions on an international register for geographical indications remains an open question, as indicated by the Secretariat, especially if the concept of geographical indications should be considered as distinct from the concept of appellations of origin. It was important for the Working Group to reflect on this question, in view of the procedural repercussions it entailed. A revision of the Lisbon Agreement and the convening of a Diplomatic Conference for that purpose could be decided by the Assembly of the Lisbon Union, but a more far-reaching exercise could only be launched by the General Assembly of WIPO.

161. The Chair then turned to the comments that had been made on Article 5(5) and said that, if the only purpose of that provision was to make it clear that the name or the title of the protection granted by the Contracting Party of Origin to a geographical indication or an appellation of origin could not be the only factor for refusing the effects of the international registration in other Contracting Parties, its current draft might not be the most appropriate one. However, there were limits to detaching form from content and the real question in this connection was whether protection by trademark legislation could produce the same effects as *sui generis* legislation for the protection of geographical indications and appellations of origin. In that regard, he noted that some delegations had answered positively to that question while others were of the view that trademark law was not capable of producing the effects that *sui generis* legislation on geographical indications and appellations of origin would produce. The Chair also recalled that questions had been raised as to how the system would work in practice and, more specifically, on how international applications based on certification of collective marks in the Contracting Party of Origin would be treated and what would happen to internationally registered geographical indications and appellations of origin in countries that only had certification or collective mark systems for the protection of geographical indications.

162. With regard to Article 5(5), the Delegation of the European Union said that it was very difficult to consider the form separately from the content. The Delegation further indicated that, even though in some countries the trademark system could indeed provide an appropriate basis for the protection of appellations of origin, it might not be the same in other countries. For example, in the case of the European Union, the Community trade mark system did not appear to be a suitable means for the protection of appellations of origin.

163. As regards the possibility for trademark systems to confer a high level of protection to geographical indications in accordance with Article 3 of the current Lisbon Agreement, the Representative of ORIGIN referred to the findings of a recent study on the American system that ORIGIN had conducted together with eminent American lawyers and law professors. The conclusions of the study were that with some minor amendments to US legislation, the US trademark system could achieve a level of protection that would be compatible with Article 23 of the TRIPS Agreement, which was similar to Article 3 of the Lisbon Agreement. He therefore expressed the view that aiming at a high level of protection within the Lisbon system would not automatically mean excluding all trademark protection systems.

164. The Delegation of Peru requested that the provision regarding homonymy contained in Article 10(5) be put in square brackets for the time being, as it had difficulties with the way in which that provision had been drafted.

165. In this regard, the Chair said that further reflection was needed as to how elements or provisions of the TRIPS Agreement had best be incorporated into the DNI, i.e. by way of references or by way of including the language contained in the relevant TRIPS provisions.

ARTICLE 6: PROTECTION BY VIRTUE OF OTHER TEXTS

166. The Representative of INTA expressed the view that the general issue of references to the TRIPS Agreement also concerned Article 6. In that regard, while referring to her statement concerning Article 10(2)(b), she suggested that, if the TRIPS references were included in substantive articles, such as Article 10, to meet concerns about TRIPS compatibility, Article 6 might be used to cover other principles contained in the TRIPS Agreement, such as the priority principle.

167. The Chair pointed out that Article 6 only dealt with the protection of geographical indications and appellations of origin and therefore references to other rights might not be appropriate in such a provision.

ARTICLE 7 AND RULES 5 AND 6: APPLICATION

168. The Representative of INTA expressed the view that the title of Article 7(1) “Protection in Contracting Party of Origin” did not seem to be appropriate and that it should be replaced by a terminology that would refer to the types of application that could be submitted. With regard to Article 7(3)(ii), he recalled that one of the reasons for the ongoing drafting exercise was to ensure that those geographical indications which were protected by certification marks were also given access to the International Register. He therefore expressed the view that the provision in Article 7(3)(ii) did not fully cover that objective for two reasons. First, when one looked at the Trademark Registers of countries such as the United States of America which used certification marks, one would see that certification marks containing geographical indications were most often owned by companies, corporations, individuals, Government agencies or State agencies. Therefore, the present wording of Article 7(3)(ii) might be too restrictive in that respect. He suggested that the term “such as” be substituted by the term “for instance” in order not to limit the access to file to legal entities that were federations or associations. He recalled that the owners of certification marks in the United States of America, Canada and other countries were not entitled to use the geographical indications themselves and therefore would not fall under Article 7(3)(i). Moreover, as they were not representing other holders of such a right, they would not fall under Article 7(3)(ii) either. He said that, as recorded in paragraphs 232 and 257 of the report of the previous session, the phrase he had suggested was “an entity having legal standing to assert rights in the geographical indication or the

appellation of origin". The Representative of INTA further indicated that, at least in banking and business law, an individual could be a legal entity and to make that clear in the DNI he suggested adding a definition of "legal entity" in the abbreviated expressions.

169. The Delegation of the European Union suggested that subparagraphs (i) and (ii) of Article 7(1)(a) be linked by the term "or" instead of "and" as currently drafted. The Delegation further suggested an amendment to Article 7(3) so that the text would read: "Subject to paragraph 4, the application for the registration of a geographical indication or an appellation of origin shall be filed by the Competent Authority in the name of (i) users entitled under the law of the Contracting Party of Origin to use the geographical indication or the appellation of origin, or, (ii) entities such as a federation, association, or a group of producers, whatever their legal form or composition which represent the holders of the right under the law of the Contracting Party of Origin to use the geographical indication or the appellation of origin". The Delegation also noted that Articles 7(6) and 7(7) indicated that the mandatory and optional particulars to be included in the international application were specified in the DR, while in turn Rule 5 of the DR laid down requirements concerning the application. The Delegation also noted that Rule 5(2)(ii) and Rule 5(4)(ii) stated that the international application had to include an indication of the holder or holders of the rights to use the geographical indication and appellation of origin and suggested that the terminology be adapted along the lines of the wording it had proposed for Article 7(3). The Delegation further suggested inserting the notion of "users or entities entitled under the law of the Contracting Party of Origin to use the geographical indication or appellation of origin" in Article 7(4) and Article 7(5)(iii). With regard to the product, the Delegation was of the view that Rule 5(2)(iv) and Rule 5(4)(vi) should require that the product be clearly described so that it can be identified. In that regard, the Delegation recalled that the European Union regularly encountered problems with applications from certain countries, from which it was impossible to understand what the product was, to which the geographical indication or appellation of origin referred, for example, whether it was a raw plant, or leaves, or dried leaves. As regards Rule 5(3)(ii) and Rule 5(5)(ii), the Delegation requested clarification as to the legal effect of those additional translations of the geographical indication or the appellation of origin. The Delegation further clarified that under the European Union *acquis*, only the terms as registered in the Country of Origin could be registered in the European Union, and expressed the view that it would be important to uphold that principle also in the DNI. Furthermore, as regards Rule 5(3)(vi) and Rule 5(5)(vi), which provided that "any further information could be provided concerning the protection granted to the geographical indication or appellation of origin in the relevant Contracting Party, for example, a description of the connection between the quality, reputation or other characteristic of the product and its origin", the Delegation expressed the view that information about the link between the product and its geographical origin was crucial and should therefore be made mandatory; otherwise, it would be difficult to ensure that all requirements of the definition of a geographical indication or an appellation of origin were met.

170. The Delegation of Costa Rica first sought clarification on the compatibility between the title of Chapter II, which read "*Application and International Registration*", and the provisions of Article 7(1)(c), which stated that protection could arise out of legislative or administrative Acts. In that regard, the Delegation expressed the view that the protection arising out of an administrative Act did not mean registration of a geographical indication or appellation of origin. Referring to Article 3 of the DNI which stated that "Each Contracting Party shall designate an entity which shall be responsible for the administration of the Agreement in its territory and for communications with the International Bureau", the Delegation was of the view that such reference to a single entity might prevent other administrative acts concerning a geographical indication or an appellation of origin, issued by other authorities such as the Ministry of Health or the Ministry of Agriculture from reaching the International Bureau. To overcome that problem, the Delegation suggested amending Article 7(1)(c), so that the provision would read "Protection in the Contracting Party of Origin, pursuant to the relevant provisions of its national legislation, may be established by means of a legislative or administrative Act, a judicial decision or administrative decision, or registration."

171. The Delegation of Romania underscored that the issue of trans-border geographical indications was a very sensitive subject which deserved careful consideration. The Delegation requested clarification as to what Article 7(5)(ii) prescribed in case the Contracting Parties concerned could not reach agreement on a joint application.

172. The Delegations of France and Portugal associated themselves with the comments made by the Delegation of the European Union.

173. The Delegation of Italy wondered whether it would not be preferable to move paragraphs (2) and (4) of Rule 5 to Article 7(6).

174. As regards Article 7(4), the Delegation of the Republic of Moldova expressed the view that there should still be some sort of formality to ensure that applications filed directly by beneficiaries also met the requirements of the DNI and suggested, for example, that the application under Article 7(4) be subject to the presentation of specific documentation or compliance certificate issued by the national Competent Authority.

175. Referring to the subtitle of Article 7(1) and the suggestion to replace "*Protection in Contracting Party of Origin*" by "*Types of Application*", the Secretariat clarified that "*Protection in Contracting Party of Origin*" had been used because the basis of an international registration was always the protection in the Contracting Party of Origin. However, if the general view was that it would be more appropriate to refer to "*Types of Application*" instead, the subtitle under consideration could certainly be amended. As regards the drafting suggestion made by the Delegation of the European Union with respect to Article 7(3), the Secretariat wondered whether the proposed wording would accommodate the concern expressed by the Representative of INTA. As regards the suggestion made by the European Union to change the word "and" into "or" at the end of Article 7(1)(a)(i), the Secretariat pointed out that since it might sometimes be necessary for a Contracting Party of Origin to submit at the same time an application for a geographical indication and an appellation of origin, it might be preferable to use "and/or" instead of simply "or". As regards the suggestion made by the Delegation of the European Union to indicate more explicitly in Rules 5(2) and 5(4) that a clear description of the product to which the geographical indication or the appellation of origin applied had to be provided, the Secretariat wondered how that would work in practice. For example, was the Delegation of the European Union suggesting that standardized product descriptions should be established. As regards the suggestion made by the Delegation of Costa Rica to add the words "or the like" in Article 7(1)(c), the Secretariat pointed out that the current wording of the Article reproduced the one contained in the current Lisbon Regulations and therefore wondered whether it would really be necessary to add the words suggested by the Delegation of Costa Rica.

176. Referring to the "translations" issue, the Secretariat pointed out that Rules 5(3)(ii) and 5(5)(ii) mentioned as possible optional contents of the application translations of the geographical indication or appellation of origin in such languages as the applicant may choose. In that regard, the Secretariat confirmed that both the Lisbon Agreement and the DNI provided protection to the translated forms of a geographical indication or appellation of origin, and referred to Article 10(2)(a)(i) which stated that the use of the geographical indication or appellation of origin in translated form was also covered by the protection granted.

177. As regards the points raised by the Delegation of the European Union on the description of the link between "the quality reputation or other characteristic of the product and its origin" in respect of a geographical indication, and the link between "the quality or characteristics of the product and its geographical environment" in respect of an appellation of origin and the suggestion that such information be part of the mandatory requirements of international applications, the Secretariat said that such modification could certainly be made, subject to the approval of the Working Group. However, at the third session of the Working Group in May 2011, the Working Group had not been in a position to recommend to the Assembly that

the description of the link referred to above should be a mandatory requirement, but only an optional element for international applications under the Lisbon Regulations. This optional provision had been adopted by the Assembly in September 2011 and had entered into force in January 2012.

178. Referring to the Delegation of Romania's comment on Article 7(5), namely that it might be difficult for two Contracting Parties sharing a trans-border area to find an Agreement for purposes of establishing a joint trans-border geographical indication or appellation of origin, the Secretariat pointed out that the provision in question did not require countries to agree, as they could always submit applications only for that part of the trans-border area that was situated on their territory. With respect to the Delegation of the Republic of Moldova's suggestion to subject Article 7(4) to the submission of evidence by direct applicants in the form of a certificate from the Competent Authority, or to the submission of any other evidence originating from the Competent Authority, the Secretariat expressed the view that in such case that provision might as well be deleted. Would it not be enough for direct applicants to provide a copy of the registration certificate issued in their own Contracting Party of Origin, as required under Rules 5(2) and 5(4)?

179. The Delegation of the European Union sought further clarification from the Secretariat as regards subparagraphs (i) and (ii) of Article 7(1)(a) as it failed to understand how an applicant would be able to file an application for a geographical indication and for an appellation of origin for the same product. The Delegation said that its understanding was that the applicant would have to make a choice between either an application for a geographical indication or an application for an appellation of origin, all the more since the geographical indication and appellation of origin definitions had different requirements.

180. In response, the Secretariat clarified that, in order to obtain protection in a country A which had declared that it did not provide protection for appellations of origin pursuant to Option A of Article 5(2), a country B that had registered an appellation of origin under the International Register should therefore seek protection of its appellation of origin as a geographical indication in country A. To do so, country B would have to file an application for the international registration of its appellation of origin both as an appellation of origin and as a geographical indication, to obtain protection for its appellation of origin as an appellation of origin in the other Contracting Parties that provided for appellation of origin protection, but also to obtain protection of its appellation of origin as a geographical indication in those Contracting Parties that did not provide for appellation of origin protection separately from geographical indications. The Secretariat pointed out that a similar situation would be the case of an applicant from a Contracting Party that did not have a definition for appellation of origin in its law and that only provided protection to geographical indications. In such case, if the applicant in question had a geographical indication which inherently met the requirements of an appellation of origin he would be entitled to file an application for international protection both as a geographical indication and as an appellation of origin.

181. The Delegation of the European Union said that if the Working Group ultimately opted for a single level of protection for both appellations of origin and geographical indications, it did not see the necessity of filing applications, either as an appellation of origin or a geographical indication, or both as an appellation of origin and a geographical indication, because the level of protection would be the same in all the Contracting Parties.

182. As regards Article 7(5), the Delegation of Romania was of the view that the possibility of filing a joint application would complicate matters unnecessarily as it might be necessary to involve the relevant foreign ministries. However, if the general view was to keep Article 7(5)(ii) in the DNI, perhaps such provision could be amended so as to make it clear that the application had to be filed jointly by the two parties, and not only by one party on behalf of the other. The

Delegation further expressed the view that the use of the terms “may” at the end of the first sentence of Article 7(5) and the use of the terms “if their legislation so permits” in subparagraph (iii) of Article 7(5) was too permissive.

183. The Secretariat clarified that the provisions of Article 7(5)(ii) were not meant to allow one of the Contracting Parties to file an application on behalf of the other and pointed out that if the Contracting Parties in question could not agree to file an application jointly, Article 7(5)(i) allowed each of them to file an application separately for that part of the trans-border area situated on its territory. The Secretariat further indicated that the wording of Article 7(5)(iii) established a parallel with the provisions of Article 7(4).

184. To address the concern expressed by the Delegation of Romania, the Delegation of the Republic of Moldova suggested adding the phrase “referring to the part of the trans-border area situated in its territory” at the end of Article 7(5)(iii), because as currently drafted that provision seemed to indicate that a Contracting Party could allow somebody from its territory to file an application for the entire trans-border area.

185. The Delegation of Romania expressed support for the drafting suggestion made by the Delegation of Moldova, as it perfectly addressed its concern.

186. With respect to the guidance requested by the Secretariat as regards the description of products, the Delegation of the European Union said that it could certainly give several examples of what the European Union meant by description of a product. In that regard, the Delegation first mentioned Article 4(2)(b) of the Council Regulation (EC) 510/2006 which referred to “a description of the agricultural product or foodstuff, including the raw materials, if appropriate, and principal physical, chemical, microbiological or organoleptic characteristics of the product or the foodstuff”. The Delegation further indicated that the European Union had also issued guidelines to assist users in describing their products. As far as wine was concerned, the Delegation pointed out that the relevant provisions of the Regulations of 2007 required that a specific indication of the type of wine concerned be provided, for example, whether it was a sparkling wine or not. With respect to spirit drinks, the Delegation referred to Article 16 and Article 17(4)(d) of the Council Regulation 110/2008 which required as one of the main specifications “a description of the method for obtaining the spirit drink and, if appropriate, the authentic and unvarying local methods” as there were dozens of categories of spirits. Lastly, the Delegation expressed the view that subparagraph (c) of Article 7(1) was not in the right place since Article 7 dealt with the procedures for filing applications and not with the national or regional means of protection in the Contracting Party of Origin.

187. The Chair concluded that there seemed to be agreement on the need to change the title of Article 7(1) into “*Types of Applications*”. Further, a preference had been expressed for linking subparagraphs (i) and (ii) of Article 7(1) with “or” rather than “and”, but it was also recognized that this would depend on the outcome of our discussions as to whether the DNI should provide for a single unified level of protection for both appellations of origin and geographical indications. As regards Article 7(1)(c), interesting comments had been made on this provision both by Costa Rica and the European Union. What might have puzzled delegations concerning this provision was that it was worded as a provision addressing the issue of protection in the Contracting Party. The Secretariat had pointed out that the same provision appeared in the current Lisbon Regulations (Rule 5(2)(a)(vi)). However, under that provision, it was not a substantive requirement, but just a formal one, even though mandatory as part of the content of the application. Either Article 7(1)(c) should be re-worded or it should be merged with the single article that would address the level and content of protection.

188. The Chair then referred to Article 7(3)(ii), for which three concurrent proposals were on the table to rephrase this provision, from the Delegation of the European Union, from the Representative of INTA and from the Secretariat, which wondered whether perhaps those two

proposals could be combined, if the text proposed by the Delegation of the European Union would be adapted by leaving out references to representation by the entity concerned, and adding “for instance” after “such as”, or by replacing the expression “such as” by “for instance”.

189. As regards the description and identification of the product to which the geographical indication or the appellation of origin applies, the Delegation of the European Union had suggested that it should be a mandatory requirement that the application describe the product in a clearly identifiable manner. The Delegation of the European Union had also suggested that the information the applicant wished to provide on the connection between the characteristic of the product and its origin, or between the quality or characteristics of the product and its geographical environment should be transformed from an optional element into a mandatory one, as this was a very important factor not only for the Contracting Party of Origin, but also for other Contracting Parties in assessing whether the criteria for protection had indeed been met. However, before the current Lisbon Regulations were modified in that respect, we had a discussion on whether this element should become mandatory or optional, and at that time the decision was taken to include this as an optional element. To be on the safe side, it would be useful to know whether the Working Group would indeed like to change this element into a mandatory one.

190. Enquiries have been made about the legal effect of translations of the geographical indication or appellation of origin mentioned in an application. The Secretariat had pointed out that, as there was protection against translated terms of appellations of origin and geographical indications under Article 3 of the Lisbon Agreement as well as under Article 10 of the DNI, these translations would have a role to play in that context, namely in the context of providing protection against translated forms of the geographical indication or the appellation of origin.

191. As regards the concerns expressed by the Delegation of Romania regarding Article 7(5), the Working Group had taken note of the drafting suggestion from the Republic of Moldova to accommodate these concerns. The Delegation of Italia had suggested moving Rule 5(2) and Rule 5(4) from the DR to Article 7 of the DNI. The Chair wondered, however, whether this would prevent the necessary regulatory flexibility. It was not by chance that formal requirements were defined in the Lisbon Regulations and not in the Lisbon Agreement. Finally, turning to the suggestion from the Delegation of the Republic of Moldova concerning Article 7(4), the Secretariat had pointed out that it was part of the mandatory requirements that an application, also if it came directly from the holder or the legal entity, should include identifying details of the judicial or administrative decision, the legislative or administrative act, or the registration. Consequently, the situation was not different from that applying in case of applications filed by a Competent Authority.

192. With respect to its comment on Article 7(4) concerning direct applications, the Delegation of the Republic of Moldova reiterated its view that some kind of official evidence had to be provided for purposes of establishing that the indication or denomination for which international registration was sought designated a product that complied with the DNI. In that regard, referring to the example of the holder of a certification trademark that would seek international registration as an appellation of origin, the Delegation expressed doubts as to whether the mere provision of the trademark registration number would be sufficient. The Delegation further pointed out that translation issues might also appear as competent authorities would be receiving applications from everywhere in foreign languages that the Competent Authority would not be able to read.

193. As regards Article 7(4), the Delegation of Iran (Islamic Republic of) agreed that some type of evidence had to be provided attesting that all the necessary national requirements had been met. Furthermore, the Delegation did not agree with the suggestion made by the Delegation of

the European Union to make certain elements of the application, such as product descriptions, mandatory, and further expressed the general view that there should not be too many obstacles in the process of registering internationally appellation of origins and geographical indications.

194. As regards the suggestion made by the European Union to include product descriptions in the international applications as a mandatory requirement, the Chair wondered whether similar requirements as those requested under national or regional laws should also apply with respect to international applications. In that regard, the Chair clarified that both the current Lisbon system and the system envisaged under the DNI, operated on the assumption that the product's compliance with the protection criteria for geographical indications or appellations of origin would have already been checked by the competent authorities of the Contracting Parties, and therefore suggested that Contracting Parties continued to work on the basis of mutual confidence and relied on each other in that respect.

195. The Chair expressed the view that subparagraph (c) of Article 7(1) as currently worded might not be in the right place because it did not directly concern applications but, instead, addressed the means through which protection could be established in the Contracting Party of Origin. Moreover, he wondered whether it would be necessary to have such a provision in the DNI itself as it already was a commonly agreed principle that different means of protection at the national level could be accepted for purposes of submitting an international application. The Chair also pointed out that Rule 5(2)(vi) and Rule 5(4)(vi) of the DR already listed the identifying details of the means through which protection was granted in the Contracting Party of Origin as one of the mandatory elements of the application.

196. Referring to Article 7(1)(c), the Secretariat clarified that since Articles 7(1)(a) and 7(1)(b) respectively started with the terms "where a geographical indication is protected in a Contracting Party of Origin" and "where an appellation of origin is protected in a Contracting Party of Origin", it appeared necessary to clarify in the same provision how such protection may be established in that Contracting Party of Origin. In that regard, the Secretariat indicated that the insertion of subparagraph (c) in Article 7(1) was indeed motivated by the fact that, in the daily operation of the Lisbon system, applications which did not specifically refer to the registration, administrative decision, or any other contemplated means of protection, but which instead referred to the basic law itself were very often received, which in turn meant that the International Bureau had to get back to the applicant country to obtain the information that was missing.

ARTICLE 8 AND RULE 7: INTERNATIONAL REGISTRATION AND ENTRY OF THE GEOGRAPICAL INDICATION OR APPELLATION OF ORIGIN IN THE INTERNATIONAL REGISTER

197. The Delegation of Hungary was of the view that Article 8(5) somehow undermined the provisions of Article 5 by allowing member States to apply definitions other than those established under Articles 5(3) and 5(4) of the DNI.

198. The Delegation of Italy shared the views expressed by the Delegation of Hungary and said that if they were working on the assumption that the grant of international protection was subject to the satisfaction of the definition requirements of Articles 5(3) and (4) of the DNI, the indication that the grant of protection could also "be accorded on the basis of other definition" as stated in Article 8(5) somehow reduced the value of the definitions in Article 5.

199. The Delegation of Iran (Islamic Republic of) did not see any contradiction between the Article 5 definitions and the other possible definitions referred to in Article 8(5), given that subparagraphs (i) and (ii) of Article 8(5) were intended to align those other definitions with the definition requirements of Article 5.

200. The Delegation of Peru shared the views expressed by other delegations and agreed that the possibility of using other definitions as referred to in Article 8(5) would somehow undermine the value of the geographical indication and appellation of origin definitions in Article 5. The Delegation also expressed the view that the provisions of Article 8(4) should be removed to the DR.

201. As regards the first sentence of Rule 7(4)(b) in the French version of the document, the Delegation of Algeria pointed out that the word "*de*" was missing right after "*Arrangement*" and that the text would therefore read "*Arrangement de Lisbonne*". As regards the substance of Rule 7 and the reference to Article 30.1, the Delegation pointed out that no mention was made of a possible transition period in Article 30 of the DNI as it was the case under the Madrid Agreement and the Madrid Protocol. In that regard, the Delegation recalled that Article 15 of the Lisbon Agreement stated that "This Agreement shall remain in force as long as five countries at least are parties to it". The Delegation suggested including a specific reference to a possible transition period to give sufficient time to those countries that would be both party to the Lisbon Agreement and to the DNI to move from one instrument to the other.

202. As regards the suggestion made by the Delegation of Peru to transfer the provisions of Article 8(4) to the DR, the Representative of INTA pointed out that such provisions concerned filing date requirements and that they were important enough to be put in the primary legislation rather than in the regulations. Lastly, he suggested inversing the order of paragraphs (2) and (3) of Rule 7 so that the "Contents of the Registration" appeared before the "Certificate and Notification".

203. In relation to Article 8(5), the Secretariat echoed what the Delegation of Iran (Islamic Republic of) had said and clarified that, in respect of applications based on other definitions, subparagraphs (i) and (ii) of Article 8(5) did require that such applications specified the elements that were required under the definitions in Article 5. As regards Article 30, the Secretariat said that the request from Algeria would be taken into account as well the suggestion made by the Representative of INTA to reverse the order of paragraphs (2) and (3) of Rule 7.

204. In view of the concerns expressed by several delegations, the Chair suggested putting Article 8(5) between brackets for the time being.

205. As regards Rule 6, the Delegation of Algeria suggested replacing the current wording "within a period of three months from the date of such invitation", by "within a period of three months from the date on which the invitation was sent".

206. The Secretariat confirmed that the Delegation of Algeria's drafting suggestion would be taken into account.

ARTICLE 9 AND RULE 8: FEES

207. With respect to the fees under Article 9, the Delegation of Iran (Islamic Republic of) suggested adding a paragraph 3 that could read "In case the application is submitted by a developing country, the International Bureau may waive up to 50 per cent of the applicable fees".

208. The Delegation of Costa Rica shared the view that the reduction of rates for developing countries might contribute to a higher number of accessions and registrations because the fees would be more attractive.

209. The Secretariat confirmed that the suggestion made by the Delegation of Iran (Islamic Republic of) would be included in a revised version of the DNI.

ARTICLE 11: SHIELD AGAINST BECOMING A [GENERIC INDICATION] [CUSTOMARY TERM OR NAME]

210. The Delegation of Iran (Islamic Republic of) indicated its preference for Option A and, referring to the expression “a registered geographical indication” in the first sentence of Article 11, wondered whether such provision was conditional on international registration with the International Bureau or on registration in a Contracting Party.

211. As regards Article 11, the Delegation of the European Union considered that it would be more appropriate to simply lay down that a registered geographical indication or appellation of origin may not become generic, and suggested that the title of the article be changed accordingly. As far as Options A and B were concerned, the Delegation said that it would prefer to go back to language similar to Article 6 of the Lisbon Agreement. Lastly, the Delegation sought clarification as to why Options A and B had been extended to “services” in addition to “goods”.

212. The Delegation of Romania was of the view that the use of the terms “geographical indication” and “generic indication” in the same sentence might be confusing and therefore suggested replacing “generic indication” by “generic term”.

213. As regards the first paragraph of Article 11, the Delegation of Mexico said that it was not clear whether the text referred to a geographical indication or an appellation of origin registered in the International Register and also in effect in a Contracting Party, or whether it referred to a domestic registration in a Contracting Party also in effect in a Contracting Party. In parallel, the Delegation indicated its preference for Option A.

214. The Delegation of Peru indicated its preference for Option A so that the text would be similar to Article 6 of the Lisbon Agreement. Referring to the first sentence of Article 11, the Delegation expressed the view that if such provision already stated that the geographical indication or appellation of origin may not be considered as generic as long as it is “in effect in a Contracting Party”, it would not be necessary to refer in the last sentence to “as long as it is protected as a geographical indication or appellation of origin in the Contracting Party of Origin”. In that regard, the Delegation also sought clarification as to whether the provisions in Article 11 referred to an international or a domestic registration.

215. The Delegation of France pointed out that the French version stated that the “geographical indication can not be considered to have become”, whereas the English version read “may not be considered to have become” and therefore sought further clarification in that regard. The Delegation also inquired about the link between Article 11 and Article 10(6) and wondered whether the issue of protection against use as a generic was actually being dealt with in two different sections of the DNI. The Delegation further indicated that it did not have a particular preference between Option A and Option B. As a general comment, the Delegation pointed out that in its view the TRIPS Agreement had been carefully worded since the term “generic” had been avoided altogether and wondered, however, whether the same level of prudence had to be used in the DNI. As regards the comment made by the Delegation of Romania concerning the terminology, the Delegation also believed that the word “term” would be more appropriate than “indication” so that the text would read “generic term” instead of “generic indication” as that would avoid using the same word to describe two completely different things.

216. The Delegation of Italy said that it could not express a specific preference for Options A or B at the present stage of discussions. As regards Option B, the Delegation nonetheless suggested replacing “grape varieties” by “plant varieties and animal breeds”.

217. The Delegation of Switzerland had a few queries about the possible relationship between the provisions concerning generic indications and the possibility of that being invalidated in Article 19.

218. The Delegation of Algeria said that under its national legislation it was not possible to register as an appellation of origin a term already recognized as a generic indication. On the basis of that, the Delegation was of the view that Article 11 could also be linked to Article 17 on prior use.

219. As regards the reference to “services” in Options A and B, the Secretariat said that such term appeared in Option B to reflect the language of Article 24(6) of the TRIPS Agreement. In that regard, the Secretariat explained that the same term had also been inserted in Option A as it seemed odd to only have a reference to “goods” in Option A. The Secretariat said that a geographical indication or appellation of origin could consist of a term that in the language of another country would be considered generic for certain services and that was also the reason why “services” were mentioned along with goods. Regarding the question raised by the Delegations of Mexico and Peru, and also in response to the comment made by the Delegation of Peru that the last sentence of Article 11 might not be necessary, the Secretariat indicated that the word “registered” at the beginning of Article 11 was an abbreviated expression, and then if one referred to Article 2(xix) of the DNI one could see that the term “registered” meant “entered in the International Register in accordance with the Agreement”. In other words, Article 11 only addressed international registrations as it was also the case in Article 6 of the Lisbon Agreement which also referred to appellations of origin registered under the Lisbon Agreement. The Secretariat added that it was a provision that addressed other countries than the Contracting Party of Origin who were in principle obliged to protect an international registration for an appellation of origin or a geographical indication as long as it was protected in the Contracting Party of Origin, and that was the reason why the last sentence of Article 11 was necessary. The Secretariat agreed with the suggestion to use of the word “term” instead of “indication” as that would also align Options A and B. As regards the suggestion to add the “customary name of a plant variety or animal breed”, the Secretariat did not object to that either, subject to agreement by the Working Group as a whole. As regards the suggestion to have language which would read “may not become generic”, the Secretariat said that such language would deviate from the current text of the Lisbon Agreement. In that regard, the Secretariat referred to Note 11.01 of the “Notes on the DNI” which explained that in previous discussions in the Working Group, it had appeared that the delegations had different views about the actual interpretation of Article 6 of the Lisbon Agreement, so that differences of view would no doubt also exist in relation to Article 11. In other words, some countries would consider the provisions therein to be an absolute ban on genericism, while others would consider them as a rebuttable presumption. In that respect, the Secretariat expressed words of caution as regards the different systems of protection which existed around the world, in particular in Anglo-Saxon common law countries a provision which would lay down an absolute ban would be a non-starter. As regards the relationship with Article 10(6), the Secretariat said that Article 10(6) had been added to make it absolutely clear that in principle protection of an internationally registered geographical indication or appellation of origin was available to put an end to any use as a generic. In other words, once protection became available for a geographical indication or an appellation of origin, through the treaty, then any use that would be made of that appellation of origin or geographical indication would be illegal and Article 10(6) included a reference to Article 17 because it would be possible under the DNI, as it was possible under the current Lisbon system, for countries that were parties to the system to refuse to protect an international registration if the geographical indication or appellation of origin in question consisted or contained a name or term which was considered to be generic in the country in question, so Article 17 allowed for such refusals only in cases of prior use as a generic and Article 10(6) made it clear that any later use would not be legal. The Secretariat pointed out that prior use could be legal if the country issued a refusal based on genericism, however if the country did not do so then from the moment that protection came into effect under the treaty in the country

in question, any use as a generic would have to stop. The Secretariat said that it was true that perhaps Article 10(6) and Article 11 came very close to each other. As regards the comment made by the Delegation of Switzerland as to what the relationship was between Article 11 and Article 19, the Secretariat said that in principle if there was use as a generic that would not constitute a prior use that would be legal under Article 10(6) and Article 11, whereas if it would be a prior use it could be the subject of a refusal. If a country had not refused then that use should stop, but if someone disputed that in Court and if the Court established that there had been a prior use, the person bringing the case to Court would have to prove that he or she was already using the geographical indication or appellation of origin before it became protected, then the Court might decide to invalidate the effect of the International Registration in that Contracting Party.

220. Noting that in the Spanish version the first sentence of Article 11 began with "*No podrá considerarse que*…" ("It shall not be considered that…"), the Delegation of Peru suggested rephrasing the text in a more positive way by using "A registered geographical indication or appellation of origin in effect in a Contracting Party shall not be considered as..."

221. Referring to Option B, the Delegation of the European Union said that it could not accept the terms "or the customary name of a grape variety" in Article 11 and, as regards the explanations given by the Secretariat that the drafting suggested by the EU "may not become generic" could be a non-starter for certain countries such as common law countries, the Delegation recalled that the current wording of Article 6 of the Lisbon Treaty read "cannot" which was stronger than "may not".

222. The Secretariat did not understand the Delegation of the European Union's refusal to accept the use of the terms "or the customary name of a grape variety" as that was language from the TRIPS Agreement. The Secretariat also pointed out that Article 6 of the Lisbon Agreement did not only use "cannot" but "cannot be deemed to have become generic", which was very similar to "may not". The Secretariat recalled that some countries which were parties to the Lisbon Agreement considered Article 6 of the Lisbon Agreement as establishing a rebuttable presumption, while other countries of the Lisbon Agreement considered it to be an absolute ban. Hence, an attempt had been made in Article 11 to draft the text in such a way as to accommodate both views.

223. The Delegation of Italy asked whether the current wording of the Lisbon Agreement already allowed different interpretations among the current Lisbon membership, and if that was the case the Delegation did not see the necessity to deviate from the provisions of Article 6 in the DNI.

224. Along the same lines, the Chair suggested referring back to the Summary by the Chair that was adopted at the end of the second session of the Working Group which stated that "the Chair concluded that delegations were of the view, although for different reasons, that an amendment to Article 6 of the Lisbon Agreement was not necessary". The Chair was of the view that they should basically follow the language contained in Article 6 of the Lisbon Agreement.

225. Given that no consensus had been reached as regards Article 11, the Delegation of France suggested using square brackets in the revised version of the DNI.

FUTURE WORK

Exchange of views with the Director General

226. Mr. Francis Gurry, Director General, thanked the Working Group for the hard work that had been done at the present session and for the tremendous engagement of the Working Group to move forward the process of revising the Lisbon Agreement, which was an extremely important exercise. He then brought the attention of the Working Group on two fundamental but sensitive points. First, he referred to the objective of the present exercise which was the revision of the Lisbon Agreement in such a way as to strengthen and modernizing it, but also in such a way as to obtain a genuine international system for the registration of geographical indications and appellations of origin. In the Director General's view that was certainly not an easy objective and, in that respect, he recalled that there had been over 10 years of discussions in the TRIPS Council in the World Trade Organization which had not produced such a result. He was therefore of the view that the present revision exercise was a wonderful opportunity to come up with such an international registration system. In that regard, he added that if the end result would be to simply strengthen the existing system alone, without finding a way to bring in the rest of the world, then the Working Group may end up with a revised Act of the Lisbon Agreement, which currently was only adhered to by 27 countries. The Director General further recognized that inducing the participation of the rest of the world had a cost which might be seen as too high for the existing members of the Lisbon Agreement. He therefore invited the members of the Working Group to ask themselves the question as to whether they really wanted to have an international register with universal participation, which would be a major step forward for the protection of geographical indications and appellations of origin. He then recalled the experience of the Madrid Protocol and said that in the case of the Madrid system, it was commonly known that the treaty revising the Madrid Agreement, namely the Madrid Protocol, was adopted on terms that mainly satisfied the existing membership, which in turn meant that the real expansion of the Madrid system to become a universal system was delayed by some 10 years because those in the room chose to follow a certain path which then required to be unraveled over the course of the next 10 years in order to have a genuine full participation, and therefore suggested to try not to repeat the same experience in the present revision exercise. The second point he wished to make, and he was fully aware that a number of national laws already incorporated such a provision and therefore would not have any difficulty with it, was that, if it was ultimately decided that there would be no distinction in the scope of protection between geographical indications and appellations of origin, why would it then be necessary to make a formal distinction between them. He was fully aware that he was touching upon a sensitive subject, even though some national laws already foresaw systems of that type, but, in view of the objective to have an international register that would seek a widespread participation beyond the current 27 member States, he was of the view that important consideration had to be given to that suggestion. The Director General concluded by saying that the present exercise had the possibility of representing a major step forward for the international intellectual property system, provided that an international register would be established that would attract widespread participation.

227. The Delegation of France said that the points raised by the Director General were indeed points that the Working Group was dealing with, and added that the Delegation of France had committed itself in the present revision exercise with the will to improve the international registration and protection of geographical indications and appellations of origin. The Delegation further indicated that it was in that spirit that it had devoted a great deal of time and goodwill to the current work with the hope to achieve good results. Nonetheless, the Delegation also cautioned that if the Working Group simply limited itself to the establishment of an international register instead of a truly international protection system, it would not have fulfilled its ambitious objectives. In that regard, the Delegation clarified that what it was seeking to

achieve was legal protection throughout the world for all the internationally registered products protected by a geographical indication or an appellation of origin. Therefore, when the Director General mentioned the possibility of limiting the work to a mere international registration system only, the Delegation felt the need to reiterate its expectations concerning an improved level of protection for geographical indications and appellations of origin. Moreover, the Delegation expressed the view that without an adequate harmonization of the rules and regulations, it would be difficult to reach such an ambitious objective. In any event, the Delegation was of the view that the Working Group should not bring down its initial level of ambition.

228. In reply to the comments made by the Delegation of France, the Director General said that he had not intended to lower the ambitions of the Working Group but rather to expand them so that in the long run there would be a protection system for appellations of origin and geographical indications that would be more internationally attractive. In that regard, he recalled that one of the objectives of the review exercise was indeed to improve international protection for both geographical indications and appellations of origin. He also clarified that he had not intended to suggest that a harmonization objective would have no place in an international registration system. On the contrary, the Director General was of the view that harmonization was quite compatible with the present exercise since there was no rule which said that a registration system should not contain harmonization rules. The Director General further clarified that his intention had been mainly to underline the very rare opportunity before the Working Group, while also agreeing that there was no point in having a system that would attract universal participation if the price to pay was to lower the level of protection of geographical indications and appellations of origin. Clearly, the difficulty was to find a way towards making the Lisbon system a truly international one, while also satisfying the goals that the current member States had set for the revision of the system.

229. The Chair agreed with the Director General's assessment that the objective of expanding the geographical coverage of the current system through the establishment of a truly global register, and the objective of greater harmonization towards an increased level of protection were not necessarily irreconcilable.

230. The Delegation of Italy said that the Working Group was committed to trying to find the right flexibilities and objectives to ensure a wider membership.

231. The Delegation of Switzerland recalled its active participation in the various sessions of the Working Group with a view to contributing to further the objectives of the revision exercise but also to explain its needs. In that regard, the Delegation said that it had traditionally perceived the current Lisbon system as too restrictive, which in turn had prevented Switzerland's accession to it. Nonetheless, the Delegation insisted on the fact that Switzerland did want to belong to the Lisbon system and therefore any reform that would make the system more attractive for them might lead to their country's accession to the system. The Delegation saw the ongoing revision exercise as an opportunity to enhance the protection of both geographical indications and appellations of origin. However, that dimension was not sufficiently reflected in the current version of the DNI.

232. The Director General restated that he did not question the importance of harmonization of protection. However, it was equally important to internationalize the International Register and the protection of geographical indications and appellations of origin, which in turn required decisions as to what was possible and what was not. He went on to say that a happy balance had to be found between the needs of the current member States of the Lisbon Agreement and the possibilities for expansion of the system. In that regard, he said that a balance also had to be found between geographical indications and appellations of origin, so that the new Lisbon system would not only concern the registration of appellations of origin alone but also the registration of geographical indications. The Director General reiterated his view that the work that had been accomplished so far by the Working Group was very promising and that the

Working Group had the opportunity to take a step forward in respect of the protection of geographical indications and appellations of origin at the international level.

233. The Delegation of the European Union was of the view that the DNI and DR had to be further improved and simplified for the sake of clarity. The Delegation also expressed support for the statement made by the Delegation of Switzerland.

234. The Delegation of Portugal said it supported the interventions made by the Delegation of Switzerland and the European Union in terms of greater simplification of the text and added that it really favored increased flexibility in order to attract more countries, while also maintaining the principles and objectives of the Lisbon system. The Delegation reiterated its preference for having two separate definitions, one for geographical indications and one for appellations of origin, with a single level of protection for both. The Delegation pointed out that the same format could be found in the Regulations of the European Union.

235. Upon indicating that Brazil was very interested in acceding to the Lisbon Agreement, the Representative of ABPI said that, in light of the interventions that had been made, it was his understanding that all delegations which had expressed themselves were in favor of bolstering the level of protection. In that regard, he pointed out that in those countries which were not members of the Lisbon Agreement that was perhaps the issue where most problems could be found with respect to appellations of origin. He was of the view that in order to encourage such countries to accede to the new Agreement, perhaps the Working Group should try to establish a level of protection that would be less high than the one under the Lisbon Agreement but which would be acceptable to everyone. Otherwise, if the barrier was placed too high, one might end up with no protection at all. He concluded by saying that that the higher the flexibility the greater the membership.

236. The Delegation of Costa Rica said that the present revision process was of interest to all and that the work of the Working Group would undoubtedly be fruitful in so far as it would produce a document that would be more attractive for the international community at large. However, the Delegation insisted on the fact that a new instrument alone would not be sufficient without accompanying technical promotion activities for those less developed countries that did not have a long-standing culture for the protection of geographical indications and appellations of origin.

237. In reply to the intervention made by the Delegation of Costa Rica, the Director General recalled that there would be a Ministerial meeting for Central American countries in the month of July and added that one of the topics that would be discussed and promoted on that occasion would be geographical indications. In any event, he agreed with the Delegation of Costa Rica in that a major work of promotion still had to be done, not just in the sense of the benefits of protection of geographical indications and appellations of origin, but also in how to actually achieve workable systems.

238. The Delegation of Peru recognized that, after having participated in five sessions of the Working Group, it was now fully aware that the revision exercise the Working Group had embarked upon was not an easy task. The Delegation further recalled that, even though the Lisbon Agreement was over 50 years old, in Latin American countries such as Peru, one had just started to see the emergence of the two concepts, namely geographical indications and appellations of origin. In that regard, the Delegation observed that the Working Group was now trying to include those two concepts in a revised Lisbon Agreement that would provide better protection for geographical indications and appellations of origin. However, in the Delegation's view, the complexity of such undertaking also derived from the fact that the notions of geographical indications and appellations of origin were perceived differently in different countries and it seemed difficult to accommodate all interests at stake when one looked at the different national systems of protection.

239. The Delegation of the Republic of Moldova supported the idea of having a single level of protection in order to simplify the text. The Delegation also said that it understood the concerns expressed by the Director General and added that, even if it was convinced that a strong level of protection was an advantage, it would nonetheless be ready to examine other proposals concerning the level of protection that would be made by those countries, not members of the Lisbon Agreement, that would be interested in acceding to the new Lisbon system.

240. In relation to what the Delegation of the Republic of Moldova had said, the Director General again wished to clarify that he would not want to be understood as having suggested that it was not a good thing to have a single level of protection. However, there seemed to be a problem in communicating to the rest of the world why it was necessary to have the two species, i.e. appellations of origin and geographical indications, in the DNI, if the scope of their protection would be identical.

241. The Representative of ORIGIN said that whenever reference was made to “flexibilities”, one should not only focus on the legal protection but also think about developing countries as potential members and therefore find simplified procedures, exceptions and provide technical assistance.

Follow-up to the present session

242. The Chair reminded the Working Group of the invitation to make recommendations on future work or any follow up action that was addressed to them in Paragraph 5 of document LI/WG/DEV/5/2. The Chair said that there seemed to be agreement that further meetings of the Working Group should be convened, one in the present year and two more in the next year. He further indicated that in those sessions the Working Group would continue to work with a view to further preparing a process that might result in a revision of the Lisbon Agreement and/or the conclusion of a Protocol or a new treaty supplementing the Lisbon Agreement. He concluded by saying that it seemed premature at the present stage to determine when a Diplomatic Conference would be convened to that end.

243. The Chair suggested that on the basis of the progress made at the current session in examining the DNI and the related DR, the focus of the next session should be on the examination of a revised version of both documents. For that purpose, the Secretariat would be invited to prepare a revised version of the DNI and the DR , which in turn would require a thorough overhaul and redraft of the articles and rules discussed at the present session as well as the necessary consequential amendments to the remaining articles and rules. Furthermore, alternative provisions and different options between brackets would be introduced where appropriate in the revised version. The Secretariat would be expected to work on the basis of the comments made during the current session which might call for a restructuring of the document and also for an accurate reflection of the overwhelming view expressed by delegations that the DNI should aim at a single and ambitious level of protection for both appellations of origin and geographical indications.

244. To improve the working methods of the Working Group, the Chair put forward some additional suggestions. One was that members of the Working Group, including observers, would be invited to submit their comments and drafting suggestions in writing to the International Bureau between sessions on an informal basis. The Chair clarified that such proposal did not mean that members of the Working Group would be prevented, if they so wished, from submitting formal drafting proposals at any further session of the Working Group. In the interest of ensuring full transparency, he further suggested that an electronic forum be established for purposes of posting those informal written contributions for informational purposes only. The Chair recalled the intention of the International Bureau to organize a workshop on dispute settlement within the Lisbon system on the margins of one of the next

sessions of the Working Group, while also taking note of the view expressed by the Working Group that a factual document on that topic should be prepared by the Secretariat to facilitate further reflection on that issue.

245. The Delegation of the European Union said that the Chair's suggestions for the future work of the Working Group were most timely and well structured and took note both of the indication that the modifications suggested by delegations at the present session would be duly reflected in the revised version of the DNI, and also of the suggestion to establish an electronic forum in order to exchange views informally. With regard to the issue of holding a workshop concerning dispute settlement alongside the next session, the Delegation supported the proposal as well as the suggestion that the Secretariat prepared some kind of fact sheet that would describe the various types of dispute settlement mechanisms that existed before holding the workshop in order to enable the Working Group to have a first approach to the subject which could be further fleshed out in the future.

246. The Delegation of Algeria took note of the preliminary Summary made by the Chair and thought it would be useful to make it clear that the electronic forum would not have any bearing on the official or formal discussions during the sessions of the Working Group as it might not be possible for certain countries to participate in the forum and therefore to benefit from the comments exchanged. With regard to the proposed workshop on dispute settlement, the Delegation requested that such workshop be held alongside the next session or a future session, as it would not be financially possible for all the delegations to bring along experts for a workshop that would be held separately.

247. The Chair confirmed that the proposed electronic forum would not have any formal impact on the way business was conducted in the Working Group. Furthermore, the Chair agreed that the workshop on dispute settlement should be held in conjunction with a Working Group session.

248. As regards the idea of setting up an electronic forum in which delegations could submit their comments, the Delegation of Switzerland expressed concern as to whether such forum might drive the discussions and further debate. With regard to the workshop on dispute settlement, the Delegation was of the view that it would be premature to hold such workshop in conjunction with the next session. Instead, the Delegation suggested that the Working Group focused first on the basic tenets of the discussion on principles and objectives before convening a meeting on dispute settlement.

249. The Chair reaffirmed that his original suggestion was that the workshop on dispute settlement should be held in conjunction with one of the forthcoming sessions of the Working Group and that the question of which session would host such workshop should remain open.

250. The Delegation of Spain supported the idea to organize the workshop in conjunction with one of the future sessions of the Working Group, while also requesting that all necessary measures be taken to ensure sufficient language coverage to fully benefit from the workshop.

251. The Delegation of Iran (Islamic Republic of) agreed that it would be premature to organize the workshop at the next session of the Working Group. Instead, the Delegation suggested that the entire attention of the Working Group be devoted to the discussion of the main principles and objectives of the DNI and the DR, for the time being.

AGENDA ITEM 7: OTHER MATTERS

252. No statements were made under the item in question.

AGENDA ITEM 8: ADOPTION OF THE SUMMARY BY THE CHAIR

Paragraph 13

253. As regards paragraph 13, the Delegation of Algeria said that the wording used therein gave the impression that no delegation had expressed a slightly different position than the prevailing position adopted by most delegations. In that regard the Delegation recalled that it had expressed the view that it might be difficult to have a single level of protection for geographical indications and appellations of origin, and requested that its comment be duly reflected in paragraph 13, at the end of the first sentence, perhaps through the addition of a sentence indicating that there was no consensus or that there was no unanimity in that regard.

254. Although it understood the concerns of the Delegation of Algeria, the Delegation of Italy was of the view that the word “prevailing” did not give the impression that all delegations had expressed themselves on that issue and therefore suggested keeping the word “prevailing” as no views had been expressed against a single level of protection.

255. The Chair suggested that the first sentence read “The Chair noted the prevailing but not unanimous view that the DNI should provide for a single and high level of protection”.

256. The Delegation of Iran (Islamic Republic of) wondered whether the wording suggested by the Chair could also mean that several views had been expressed in favor of a double system of protection, even though that had not been the case.

257. The Chair then suggested that the text read “The Chair noted that, while certain delegations reserved their position on this issue, the prevailing view was that the DNI should provide for a single and high level of protection”.

258. The Delegation of Switzerland supported the views expressed by the Delegation of Iran (Islamic Republic of) in that the new proposed formulation should not be construed as meaning that some delegations supported the opposite, which is to say a dual level of protection.

259. The Chair proposed yet another revised version of paragraph 13 which read “The Chair noted that, while certain delegations reserved their position on this issue, the prevailing view was that the Draft New Instrument should provide for a single and high level of protection for both geographical indications and appellations of origin, which would help simplify the text of the DNI. The Chair also noted the view advocating a drafting method whereby for the purposes of the DNI geographical indications and appellations of origin would be defined separately”.

Paragraph 16

260. The Representative of the AIPPI said that the word “*convocación*” did not exist in Spanish and that the correct word was “*convocatoria*”, and added that same comment applied to paragraph 17.

261. The Delegation of Italy recalled that the launch of a Diplomatic Conference by the General Assembly of WIPO would be required if the solution chosen would be the establishment of a new treaty or a Protocol, and also observed that in paragraph 13 the language regarding geographical indications and appellations of origin as distinct categories had been changed.

262. The Chair said that Italy had made a valid point and therefore the second sentence of paragraph 16 had to be adapted in view of the new language proposed for paragraph 13. In that regard, the Chair suggested that the first sentence of paragraph 16 remained unchanged, while the second sentence would be amended so as to include something along the lines of the last sentence of paragraph 2.02 of the Notes on Article 2 of the DNI which read "if on the other hand the solution chosen would necessitate the establishment of a new treaty the right to call a Diplomatic Conference and the right to vote at such a conference would belong to all Member States of WIPO".

263. The Delegation of Iran (Islamic Republic of) was of the view that it would be useful to clarify in which category an additional Protocol to the Lisbon Agreement would fall.

264. The Delegation of Algeria understood the proposal made by the Chair as meaning that the right to call a Diplomatic Conference and the right to vote at such conference would be decided by the Member States of WIPO. The Delegation's concern was that they were dealing with a Summary by the Chair and that it did not recall that such point had been discussed at the present session.

265. The Chair said that that had been stated by the Secretariat and also by the Director General himself and added that the Chair took note of those statements which had not been objected to.

266. As regards the new proposed wording for paragraph 16, the Delegation of the European Union said that the reference to a Diplomatic Conference for a Revision of the Lisbon Agreement concerned the procedure provided for in Article 13(2) of the Lisbon Agreement, and inquired as to whether it was customary to call a Diplomatic Conference a "Review Conference", otherwise the Delegation would suggest using the term "Revision Conference" instead. As regards the second sentence of paragraph 16 proposed by the Chair, the Delegation agreed with the Chair in that they did tackle that point, perhaps not in such detail as would appear in the new proposed wording, and therefore suggested to merely say "on the other hand the solution chosen necessitates the establishment of a new treaty, the Diplomatic Conference thereof would be convened by the WIPO General Assembly".

267. The Representative of INTA said that his statement followed the suggestion made by the Delegation of the European Union concerning the second sentence of the paragraph and indicated that since the right to vote in a Diplomatic Conference was resolved by the conference itself in its rules of procedure the proposed sentence would not be correct from a technical standpoint.

268. The Chair suggested that paragraph 16 read as follows:

> "The Chair clarified that a Diplomatic Conference for revising the Lisbon Agreement could certainly be convened by the Assembly of the Lisbon Union. If, on the other hand, the solution chosen would necessitate the establishment of a new treaty, the General Assembly of WIPO would have the right to call a Diplomatic Conference for that purpose."

269. In response to the question raised by the Delegation of Iran (Islamic Republic of) as to whether a Protocol would be a new treaty or where it would fit in the text which only referred to a revision of the Lisbon Agreement, the Secretariat said that the answer to that question would depend on the nature of the Protocol itself. Hence, if in substance the Protocol went beyond the ambit of the original Lisbon Agreement then the Protocol would be considered to be a new treaty, whereas, if the Protocol stayed within the ambit of the original Agreement, it would be seen as a Protocol amending the Lisbon Agreement. The Secretariat pointed out that the

working documents focused more on a Protocol as a new treaty rather than an amending Protocol to an original treaty, and indicated that perhaps the words “or a Protocol” could be added after “a new treaty” in paragraph 16.

270. The Chair said that he would prefer not to include any reference to the Protocol because it appeared that the Protocol could fall in both categories, depending on its substance, and therefore preferred to leave that question open by not mentioning the Protocol expressly.

271. Referring to the first sentence of paragraph 16, the Delegation of Peru said that it was under the impression that, under international practice, when a review or revision of an international instrument took place that would automatically imply the convening of a Diplomatic Conference because full powers had to be given to those accredited so that the existing instrument could be amended, and therefore asked whether the text should explicitly refer to “a Diplomatic Conference to that end”.

272. The Chair pointed out that Article 13(2) of the Lisbon Agreement clearly specified that “this Agreement may be revised by conferences held between the delegates of the countries of the Special Union”. In other words, the text did refer to a Diplomatic Conference as the only way to revise the Lisbon Agreement.

Paragraph 19

273. The Delegation of Algeria drew the attention of the Working Group to the second sentence which read “in particular, an overall restructuring was necessary…” and expressed the view that the sentence was ambiguous and that it had doubts as to what such sentence actually referred to. The Delegation understood that some delegations wanted a single level of protection, however when a reference was made to “an overall restructuring” it what unclear as to what kind of instrument they were referring to and therefore suggested deleting that second sentence, since the first sentence already covered everything the Secretariat would be doing.

274. The Chair said that it was his understanding that such conclusion had been reached at the present session, namely that an overall restructuring would be necessary to reflect a single level of protection and, subject to the approval by the Delegation of Italy , it would be stated in paragraph 13 that the view advocating a single level of protection was only prevailing but not unanimous. The Chair added that paragraph 18 made it clear that alternative provisions and options between brackets would be introduced in the text.

275. The Delegations of the European Union and Switzerland wished to keep the second sentence in paragraph 19 as it correctly reflected what had been concluded at the present session.

276. The Delegation of Algeria did not wish to question the fact that the option of having a single level of protection had been discussed, nor the fact that the Chair had said quite clearly that it was a matter of properly reflecting that option in the DNI. The Delegation nonetheless said that its final views on paragraph 19 would depend on whether the Delegation of Italy would accept the wording of paragraph 13.

Paragraphs 13 and 19

277. The Chair repeated his suggestion concerning those two paragraphs. He said that there was already agreement on how the second sentence of paragraph 13 should be reworded but recalled that the main disagreement concerned the first sentence which, as per his proposal, would read “The Chair noted that, while certain delegations reserved their position on this issue,

the prevailing view was that the DNI should provide for a single and high level of protection for both geographical indications and appellations of origin, which would help simplify the text of the DNI". He added that paragraph 19 would then remain unchanged.

278. The Delegation of Algeria suggested a slight addition to the third sentence of paragraph 19 to duly reflect that a single level of protection was still an option.

279. In reply to the comment made by the Delegation of Algeria, the Chair said that an amended second sentence could then read "to reflect the overwhelming but not unanimous support for a single level of protection…".

280. The Delegation of Italy suggested that paragraph 13 be amended so as to read "The Chair noted that, while not all delegations expressed themselves on this issue, the prevailing view was that…"

281. The Chair said that the point in case was that the Delegation of Algeria did express itself on that issue by saying that it was not in a position to accept the idea of a single level of protection and that further consultations with its national authorities was needed.

282. The Delegation of Italy noted, together with other delegations, that there had been a general support for a single and ambitious level of protection. However, the Delegation said that they would not object to the drafting proposed by the Chair for paragraph 13 provided that paragraph 19 remained unchanged.

283. The Delegation of Algeria said that it could accept paragraph 19 as it was, without any amendment, as long as paragraphs 13 and 19 were formally linked in the report of the present session.

284. The Chair said that such link would be duly reflected in the report. He added that it seemed that they were now in a position to adopt paragraph 19 in its original version provided the first sentence of paragraph 13 was amended as he had suggested.

285. As regards paragraph 13, the Delegation of Italy suggested replacing "certain delegations" by "one delegation reserved its position".

286. The Chair said that the text could perhaps be further amended so that the first sentence read "while one delegation expressly reserved its position on this issue…".

287. The Delegation of Algeria said that it was very rare to read specific numbers in a Summary by the Chair indicating how many delegations agreed or disagreed with a specific issue, therefore they would be ready to accept the initial drafting proposal made by the Chair concerning paragraph 13.

288. The Chair concluded by saying that paragraph 19 would remain unchanged and that paragraph 13 would be drafted along the lines of his first drafting suggestion in that regard.

Paragraph 24

289. The Secretariat said that, as explained at the beginning of the session, a change in the procedure for the adoption of the report was proposed, modeled on the procedure already in place in the Working Group on the Legal Development of the Madrid System for the International Registration of Marks. Thus, a draft of the full report of the session of the Working Group would be made available on the WIPO web site for comments by the delegations and representatives that had participated in the meeting. Participants would be informed once the draft report was available on the WIPO web site. Participants could submit comments within

one month from its publication date, after which a track-changes version of the document, taking into account all the comments received from participants, would be made available on the WIPO web site. The availability of the comments and the track-changes version would also be communicated to participants, together with a deadline for the submission of final comments on that track-changes version. Thereafter, the report, taking into account the final comments, as appropriate, would be published on the WIPO web site without track changes, indicating the date of such final publication. As of that date, the report would be deemed adopted.

290. The Delegation of Algeria asked what would happen to the procedure of adopting the report at the following session as the usual practice had been to adopt at the end of any given session the report of the previous session. The Delegation sought further clarification as to whether the new procedure would imply that the agenda item related to the adoption of the report would no longer appear in the agenda of the next session.

291. The Chair said that the Delegation of Algeria had raised a valid point and added that if such a procedure had applied with respect to the adoption of the report of the last but one session his preference would have been to include the report of the previous session as one of the items on the agenda – not as an item on the adoption of the report because that would have already taken place under the new procedure – to make sure that no disagreement remained as regards the final version of the report. In sum, it was the understanding of the Chair that, irrespective of the new procedure which provided for a streamlined way of adopting the report, the report of the previous session should nonetheless appear on the agenda of each session of the Working Group for purposes of taking note of such adopted report.

292. The Secretariat pointed out that the agenda for the meetings of the Working Group on the Legal Development of the Madrid System no longer included an agenda item for the adoption of the report of the previous session. However, the Secretariat also pointed out that the last sentence of paragraph 24 specified that “As of that date, the report will be deemed adopted…”, which in turn meant that such adoption could still be contested and that would be in line with the suggestion made by the Chair to include the report in the agenda of the next meeting.

293. The Chair suggested adding the terms “which will be noted at the next session of the Working Group” to the last sentence of paragraph 24.

Conclusion

294. The Working Group approved the Summary by the Chair, as contained in Annex I of the present document.

AGENDA ITEM 9: CLOSING OF THE SESSION

295. The Chair closed the session on June 15, 2012.

[Annexes follow]

E

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

LI/WG/DEV/5/6
ORIGINAL: ENGLISH
DATE: JUNE 15, 2012

Working Group on the Development of the Lisbon System (Appellations of Origin)

Fifth Session
Geneva, June 11 to 15, 2012

SUMMARY BY THE CHAIR

approved by the Working Group

1. The Working Group on the Development of the Lisbon System (Appellations of Origin) (hereinafter referred to as "the Working Group") met in Geneva, from June 11 to 15, 2012.

2. The following Contracting Parties of the Lisbon Union were represented at the session: Algeria, Congo, Costa Rica, Cuba, Czech Republic, France, Hungary, Iran (Islamic Republic of), Italy, Mexico, Peru, Portugal, Republic of Moldova, Serbia (14).

3. The following States were represented as observers: Angola, China, Colombia, Denmark, Dominican Republic, Germany, Ireland, Romania, Spain, Switzerland, United States of America (11).

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

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

6. The list of participants is contained in document LI/WG/DEV/5/INF/1 Prov. 2[*].

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mrs. Wang Binying, Deputy Director General, opened the session, recalled the mandate of the Working Group and introduced the draft agenda, as contained in document LI/WG/DEV/5/1 Prov. The Director General of WIPO, Mr. Francis Gurry, addressed the Working Group later on in the course of the session.

AGENDA ITEM 2: ELECTION OF A CHAIR AND TWO VICE-CHAIRS

8. Mr. Mihály Ficsor (Hungary) was unanimously elected as Chair of the Working Group, Mr. Alberto Monjarás Osorio (Mexico) and Mr. Behzad Saberi Ansari (Iran (Islamic Republic of)) were unanimously elected as Vice-Chairs.

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

AGENDA ITEM 3: ADOPTION OF THE AGENDA

10. The Working Group adopted the draft agenda (document LI/WG/DEV/5/1 Prov.) without modification.

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE FOURTH SESSION OF THE WORKING GROUP

11. The Working Group adopted the Revised Draft Report of the Fourth Session of the Working Group, as contained in document LI/WG/DEV/4/7 Prov. 2, on the understanding that the phrase “the Representative of the European Union” would be replaced throughout the document by “the Delegation of the European Union” and subject to the correction of a number of translation errors in the French version of the document, as proposed by the Delegation of Switzerland.

AGENDA ITEMS 5 AND 6: DRAFT NEW INSTRUMENT ON THE INTERNATIONAL REGISTRATION OF GEOGRAPHICAL INDICATIONS AND APPELLATIONS OF ORIGIN AND DRAFT REGULATIONS UNDER THE DRAFT NEW INSTRUMENT

12. Discussions were based on documents LI/WG/DEV/5/2, LI/WG/DEV/5/3, LI/WG/DEV/5/4 and LI/WG/DEV/5/5. The Working Group examined in detail Articles 1 to 11 of the Draft New Instrument and Rules 4 to 8 of the Draft Regulations.

13. The Chair noted that, while certain delegations reserved their position on this issue, the prevailing view was that the Draft New Instrument should provide for a single and high level of protection for both geographical indications and appellations of origin, which would help simplify the text of the Draft New Instrument. The Chair also noted the view advocating a drafting method whereby, for the purposes of the Draft New Instrument, geographical indications and appellations of origin would be defined separately.

[*] The final list of participants will be made available as an Annex to the report of the session.

14. The Chair recalled the mandate of the Working Group to further develop the Lisbon system and indicated that it was implicit in such mandate that the work would extend to the establishment of an international registration system for both geographical indications and appellations of origin.

15. On the basis of this two-fold mandate, the Working Group should work towards a revision of the Lisbon Agreement that would involve a refinement of the current legal framework and the inclusion of the possibility of accession by intergovernmental organizations, while preserving the principles and objectives of the Lisbon Agreement, and also towards the establishment of an international registration system for geographical indications. The Chair also noted that further reflection was needed as to how these elements could be combined in substantive and procedural terms.

16. The Chair clarified that a Diplomatic Conference for revising the Lisbon Agreement could certainly be convened by the Assembly of the Lisbon Union. If, on the other hand, the solution chosen would necessitate the establishment of a new Treaty, the General Assembly of WIPO would have the right to call a Diplomatic Conference for that purpose.

Future work

17. The Chair concluded that further meetings of the Working Group should be convened – one more in 2012 and two in 2013. Work should continue aiming at a revision of the Lisbon Agreement and/or the conclusion of a new treaty or protocol supplementing the Lisbon Agreement. It was premature at this stage to recommend when a Diplomatic Conference might be convened.

18. In view of the progress made at the present session, the focus of the next session should be the examination and discussion of a revised version of the Draft New Instrument and Draft Regulations that would be prepared by the Secretariat and distributed well in advance of the next session. Such work would involve a thorough overhaul and redrafting of the provisions discussed at the present session, as well as the necessary consequential amendments to the remaining Articles and Rules. Alternative provisions and options between brackets should be introduced in the texts, as appropriate.

19. The Secretariat would work on the basis of the comments made at the present session and make sure that all comments and suggestions be duly reflected in those revised versions. In particular, an overall restructuring was necessary to reflect a single level of protection for both geographical indications and appellations of origin in the Draft New Instrument.

20. For purposes of enriching the debate and improving the substantive work, the Working Group agreed that, between its sessions, participants would be invited to submit comments and drafting suggestions to the Secretariat, which would establish an electronic forum where these comments and suggestions would be posted, for information purposes only and without prejudice to the role of the Working Group and the formal discussions therein.

21. The Chair noted that the Secretariat would organize a workshop on dispute settlement within the Lisbon system as a side event, in the margins of one of the future sessions of the Working Group. In order to facilitate the discussion at such a workshop, the Secretariat would prepare a factual document on the issue of dispute settlement. The Chair also noted that several delegations were of the view that it would be premature to organize such workshop in the context of the next session of the Working Group scheduled for December 2012.

AGENDA ITEM 7: OTHER MATTERS

22. No interventions were made under this item.

AGENDA ITEM 8: ADOPTION OF THE SUMMARY BY THE CHAIR

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

24. A draft of the full report of the session of the Working Group will be made available on the WIPO web site for comments by the delegations and representatives that participated in the meeting. Participants will be informed once the draft report is available on the WIPO web site. Participants can submit comments within one month from its publication date, after which a track-changes version of the document, taking into account all the comments received from participants, will be made available on the WIPO web site. The availability of the comments and the track-changes version will also be communicated to participants, together with a deadline for the submission of final comments on that track-changes version. Thereafter, the report, taking into account the final comments, as appropriate, will be published on the WIPO web site without track changes, indicating the date of such final publication. As of that date, the report will be deemed adopted, which will be noted at the next session of the Working Group.

AGENDA ITEM 9: CLOSING OF THE SESSION

25. The Chair closed the session on June 15, 2012.

[Annex II follows]

F - E

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ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE
WORLD INTELLECTUAL PROPERTY ORGANIZATION

LI/WG/DEV/5/INF/1 PROV. 2
ORIGINAL: FRANÇAIS/ENGLISH
DATE: 14 JUIN 2012 / JUNE 14, 2012

Groupe de travail sur le développement du système de Lisbonne (appellations d'origine)

Cinquième session
Genève, 11 – 15 juin 2012

Working Group on the Development of the Lisbon System (Appellations of Origin)

Fifth Session
Geneva, June 11 to 15, 2012

DEUXIÈME LISTE PROVISOIRE DES PARTICIPANTS*
SECOND PROVISIONAL LIST OF PARTICIPANTS*

établie par le Secrétariat
prepared by the Secretariat

* Les participants sont priés d'informer le Secrétariat, en modifiant la présente liste provisoire, des modifications qui devraient être prises en considération lors de l'établissement de la liste finale des participants.

* Participants are requested to inform the Secretariat of any changes which should be taken into account in preparing the final list of participants. Changes should be requested by making corrections on the present provisional list.

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

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V. BUREAU/OFFICERS

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[End of Annex II and of document]