

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

Second Session

Geneva, August 30 to September 3, 2010

Revised 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”) held its second session, in Geneva from August 30 to September 3, 2010.
2. The following Contracting Parties of the Lisbon Union were represented at the session: Algeria, Burkina Faso, Congo, Costa Rica, Cuba, Democratic People’s Republic of Korea, France, Georgia, Hungary, Iran (Islamic Republic of), Israel, Italy, Mexico, Nicaragua, Peru, Portugal, Republic of Moldova, The former Yugoslav Republic of Macedonia¹, Tunisia (19).
3. The following States were represented as observers: Belgium, Chile, Germany, Iraq, Morocco, Romania, Slovenia, Spain, Switzerland, Thailand, Turkey, Ukraine, United States of America, Zimbabwe (14).

¹ On July 6, 2010, the Government of the former Yugoslav Republic of Macedonia deposited its instrument of accession to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. The Lisbon Agreement will enter into force with respect to the former Yugoslav Republic of Macedonia on October 6, 2010.

4. Representatives of the following international intergovernmental organizations took part in the session in an observer capacity: Economic Community of West African States (ECOWAS), European Union (EU), Food and Agriculture Organization of the United Nations (FAO), International Olive Oil Council (IOOC), World Trade Organization (WTO) (5).
5. Representatives of the following international non-governmental organizations took part in the session in an observer capacity: Brazilian Intellectual Property Association (ABPI), Centre for International Intellectual Property Studies (CEIPI), European Communities Trade Mark Association (ECTA), 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 Annex II to this report.

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mr. Francis Gurry, Director General, opened the session and welcomed the participants. He expressed, in particular, a warm welcome to the former Yugoslav Republic of Macedonia which had deposited, on July 6, 2010, its instrument of accession to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (hereinafter referred to as “the Lisbon Agreement”) and would be the 27th member of the Lisbon Union, as from October 6, 2010.
8. The Director General then recalled the developments concerning the Lisbon system that had taken place since the first session of the Working Group in March 2009, in terms of changes to the legal framework, Information Technology (IT)-based improvements and the availability of information on the Lisbon system.
9. On January 1, 2010, a number of changes in the legal regime of the Lisbon system became effective. First, procedures for the notification of optional statements of grant of protection had been introduced into the Regulations Under the Lisbon Agreement (hereinafter referred to as the “Lisbon Regulations”), on the basis of amendments recommended by the Working Group and adopted by the Lisbon Union Assembly the previous year. Those procedures allowed member States to state positively that protection had been granted to an appellation of origin newly registered under the Lisbon Agreement before the end of the one-year time-limit within which a declaration of refusal could be issued, or in case a refusal was withdrawn. A number of statements of grant of protection had, meanwhile, been recorded in the International Register.
10. The second amendment adopted by the Assembly, as recommended by the Working Group, concerned the introduction of provisions that allowed for the establishment of Administrative Instructions for the Application of the Lisbon Agreement (hereinafter referred to as “the Administrative Instructions”) by the Director General. Such Administrative Instructions had meanwhile been established and had entered into force on January 1, 2010, dealing with the use of official forms under the Lisbon procedures and the communication of applications and notifications under the Lisbon procedures by facsimile or by electronic means.

11. Following the establishment of those Administrative Instructions, the Director General indicated that he had written to all competent authorities of Lisbon member States, in order to draw the attention to the possible use of electronic means of communication under the Lisbon procedures, while emphasizing the preference of the International Bureau for such means of communication. As a result, so far, arrangements had been made with competent authorities of nine Lisbon member States. The Director General expressed the hope that, in view of the efficiency of electronic communications, that all others would follow soon.
12. As regards other IT-based improvements, the Director General said that, in December 2009, the most recent issue of the WIPO Bulletin "*Appellations of Origin*", the official publication of the Lisbon system, had been published on the WIPO website. He noted that this on-line edition in PDF format of the paper version of Bulletin No. 38 was available free of charge and offered the advantage of full text search facilities. He recalled that in March 2010, PDF versions of all past issues of the Bulletin had also been made available on-line and that, in respect of future issues, WIPO was planning to establish an electronic Bulletin and discontinue the paper edition.
13. The Director General also highlighted that, in March 2010, the new interface of the *Lisbon Express* database on the Lisbon pages of the WIPO website had gone live. In addition, in the second quarter of 2010, an Interactive World Map on the Lisbon system had been introduced on those pages, showing the membership of the Lisbon system and allowing easy access to information in the International Register per member State.
14. The Director General further indicated that the changes to the Lisbon pages on the WIPO website had been part of a complete revamping of those pages in the first part of 2010.
15. As a last preliminary remark, the Director General indicated that, following consultations with Lisbon member States, the official English translation of the Lisbon Agreement had been aligned with the authentic French text of the Agreement. The corrected text had meanwhile been published on the WIPO website and a reprint of the English version of WIPO Publication No. 264 would be issued shortly. He mentioned that corrections had also been proposed to the official Spanish translation of the Lisbon Agreement, but consultations with Lisbon member States on those proposals were still on-going.
16. Moving on to address the objectives of the second session of the Working Group, the Director General briefly recalled its background. He indicated 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. As a result of the recommendations agreed at that session, the Assembly had extended the mandate of the Working Group, which was now engaged in a full-fledged review of the Lisbon system.
17. The Director General recalled that, in order to assist the Working Group in this review, the International Bureau had been requested to conduct: (1) a survey on the Lisbon system among stake holders, in the widest possible sense, i.e., member State and non-member State governments, intergovernmental organizations, non-governmental organizations 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.

18. The Director General recalled that the survey had been launched in the autumn of 2009 in the form of a questionnaire consisting of 10 questions addressing crucial issues concerning the protection of appellations of origin and geographical indications as well as allowing respondents to address also any other issues relating to appellations of origin or geographical indications that they would like to bring to the attention of the Working Group.
19. The Director General was pleased to announce that the survey had generated 36 contributions as reflected in document LI/WG/DEV/2/2, which had been published on the WIPO website on June 18, 2010: 13 from member States of the Lisbon Agreement; 12 from States not party to the Lisbon Agreement; one from an intergovernmental organization; five from non-governmental organizations; two from academia; one from a producers organization; and two from private enterprises.
20. As regards the study, the Director General recalled that, during the first session of the Working Group, a letter had been received from the African Intellectual Property Organization (OAPI) expressing its interest in the introduction into the Lisbon Agreement of provisions allowing for the accession by intergovernmental organizations – as was already the case under the Madrid Protocol Concerning the International Registration of Marks and the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs. He also mentioned that questions had been raised during that session concerning the application of the Lisbon Agreement in member States of the Lisbon Agreement that were members of the EU. As a result, the Working Group had requested the International Bureau to do a study on those two issues.
21. The Director General indicated that the study contained in document LI/WG/DEV/2/3, as published on the WIPO website on August 6, 2010, examined those issues with regard to three regional systems, namely the Andean Community, the EU and OAPI – the regional intergovernmental organizations with systems for the administration of geographical indications or appellations of origin, or both, that had member States of the Lisbon Agreement among their members.
22. The Director General concluded by saying that delegates had a challenging agenda before them. The input contained in the contributions received in response to the survey had been rich and the study identified a number of additional key issues. He recognized that some of those issues were not easy, but also indicated that on other issues there appeared to be convergence and scope for the follow-up action that the members of the Working Group had been invited to decide on.

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

23. Mr. Mihály Ficsor (Hungary) was unanimously elected as Chair of the Working Group, while Ms. Patricia Victoria Gamboa Vilela (Peru) and Mr. Howard Poliner (Israel) were respectively elected as Vice-Chairs.
24. Mr. Matthijs Geuze (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

25. The Working Group adopted the draft agenda (document LI/WG/DEV/2/1 Prov. 2) without any modification. It was nonetheless agreed that item 6 of the agenda (Results of the Survey on the Lisbon System) would be discussed before item 5 (Study on the Relationship Between Regional Systems for the Protection of Geographical Indications and the Lisbon System and the Conditions for, and Possibility of, Future Accession to the Lisbon Agreement by Competent Intergovernmental Organizations).

AGENDA ITEM 4: ADOPTION OF THE REPORT OF THE FIRST SESSION OF THE WORKING GROUP ON THE DEVELOPMENT OF THE LISBON SYSTEM (APPELLATIONS OF ORIGIN)

26. The Working Group adopted the revised draft report of the first session of the Working Group on the Development of the Lisbon System (Appellations of Origin), as contained in document LI/WG/DEV/1/4 Prov. 2, without any modification.

AGENDA ITEM 5: STUDY ON THE RELATIONSHIP BETWEEN REGIONAL SYSTEMS FOR THE PROTECTION OF GEOGRAPHICAL INDICATIONS AND THE LISBON SYSTEM AND THE CONDITIONS FOR, AND POSSIBILITY OF, FUTURE ACCESSION TO THE LISBON AGREEMENT BY COMPETENT INTERGOVERNMENTAL ORGANIZATIONS

27. Discussions were based on document LI/WG/DEV/2/3.
28. The Chair invited the Secretariat to introduce the document, noting that the document consisted of two main parts, of which Part A was dealing with the actual application of the Lisbon system as it functioned in practice in the regional systems studied, while Part B concerned the possible introduction of provisions into the Lisbon Agreement that would allow for accession by intergovernmental organizations and also addressed the substantive and formal requirements that would have to be met in that respect by the competent intergovernmental organizations for purposes of their accession.
29. The Secretariat recalled that during the first session of the Working Group a letter had been received from OAPI, in which it had expressed its interest in the introduction into the Lisbon Agreement of provisions allowing for the accession by intergovernmental organizations, as was already the case under the Madrid Protocol in respect of trademarks and under the Geneva Act of the Hague Agreement in respect of industrial designs. Moreover, questions had been raised during that session concerning the application of the Lisbon Agreement in Contracting Parties that were also members of the EU. Also, in the context of the survey on the Lisbon system, several contributions had underlined the need for the Working Group to consider how the Lisbon system actually applied in these Contracting Parties, in view of the existence of a region-wide regime for the protection of geographical indications in the EU.
30. Certain elements of the mandate for the study had required interpretation. First, as regards the meaning of the term "relationship", the Secretariat had come to the conclusion that the study should address the actual application of the Lisbon system as it functions today in those of its member States where also regional systems for the protection of geographical indications apply. Another question concerned the term "geographical indications", as the Lisbon Agreement only dealt with appellations of origin. In that regard, the Secretariat had come to the conclusion that the study should deal with

regional systems for the protection of geographical indications and/or appellations of origin. Then, there was the question as to which “regional systems for the protection of geographical indications” should be examined. In this regard, the Secretariat had come to the conclusion that the study should deal with those regional systems that applied in the Andean Community, the EU and OAPI, as these were the three regional intergovernmental organizations where legal instruments applied that dealt with the administration of geographical indications and/or appellations of origin and which also had Contracting Parties of the Lisbon Agreement among their member States.

31. As indicated in the document, the study had been prepared on the basis of publicly available documentation and, where that documentation did not provide all necessary information, the Secretariat had consulted the intergovernmental organizations in question.
32. Continuing, the Secretariat said that Part B of the Annex to the document identified the criteria which the Secretariat believed an intergovernmental organization should meet in order to be in a position to accede. First, the intergovernmental organization should have a regional system for the administration of geographical indications and/or appellations of origin protected on the basis of criteria that corresponded to the criteria under the Lisbon Agreement regarding (i) product coverage, (ii) definition of the object of protection and (iii) scope of protection. And second, such an intergovernmental organization should have the ability to grant titles of protection in respect of appellations of origin, geographical indications or both. In that regard, the study concluded that the Andean Community did not meet the second criteria, as, under the applicable law of the Andean Community, which was a common law between its four members, titles of protection were actually granted by the individual member States separately. The EU and OAPI, on the contrary, did meet the second criteria, as those intergovernmental organizations were in a position to grant titles of protection in respect of appellations of origin or geographical indications. Nonetheless, in respect of these intergovernmental organizations, questions arose as to the applicable definitions and scope of protection as well as with regard to the applicable provisions concerning prior use under an earlier trademark and the available means of protection. In addition, in respect of the EU, questions arose with regard to the criteria of product coverage, as the EU, while having four different product-specific regional systems for the administration of geographical indications and/or appellations of origin, did not have such regional systems covering all product categories covered by the Lisbon system.
33. The Secretariat concluded by saying that the study had also revealed a number of outstanding legal issues, in particular, the relationship between the law of the EU and the national laws of the EU member States concerning the protection of appellations of origin or geographical indications. Moreover, questions also remained as to the application of the Lisbon Agreement in member States of OAPI in case of any future accession by OAPI to the Lisbon system.
34. The Chair opened the floor for comments while asking three questions: (1) whether Part A of the Annex to the document correctly reflected the actual situation in the regional systems concerned and represented an appropriate reflection on the relationship between these regional systems and the Lisbon system; (2) whether participants could go along with the idea of opening-up the Lisbon system to intergovernmental organizations and, in that respect, whether they would be in favor of establishing provisions that would allow such accession; whether participants could agree with the criteria, as indicated in the document, that intergovernmental organizations would have to meet in order to be able to accede to the Lisbon Agreement.

35. The Delegation of Hungary indicated that the document raised, in an outstanding way, very relevant questions in the context of the possible membership of the EU in the Lisbon system. Probably, one of the most difficult issues would be to find harmony between the regional system of the EU and the Lisbon system on product coverage. Another very difficult issue arose with regard to geographical coverage, as long as not all member States of the EU were Contracting Parties of the Lisbon Agreement. Nonetheless, the Delegation was confident that an appropriate legal basis could be established and therefore strongly supported the continuation of work in that direction. In its view, Part A of the Annex to the document correctly reflected the existing situation. As regards Part B, the Delegation was in favor of the idea of opening-up the Lisbon system for the accession of intergovernmental organizations and could agree with the proposed criteria.
36. The Delegation of Burkina Faso deplored the absence of OAPI at the second session of the Working Group. Although Burkina Faso was one of the member countries of OAPI present at that session of the Working Group, the Delegation was also concerned as regards its capacity to answer questions regarding OAPI.
37. The Representative of ECOWAS stated that as a regional organization of 300 million inhabitants the purpose of their attendance at that Working Group meeting was to understand the Lisbon system better, and in particular how it might apply to members of ECOWAS, who were also members of OAPI and States party to the Lisbon system.
38. The Delegation of Iran (Islamic Republic of) agreed with the comments made by the Delegation of Hungary. Difficult issues surrounded the possible accession to the Lisbon system by intergovernmental organizations. Many challenges remained to be solved for intergovernmental organizations that wished to accede to the Lisbon system. Obviously, it was not for the Secretariat, but for these intergovernmental organizations themselves to study how they could adapt themselves to the criteria identified by the Secretariat in Part B of the Annex to the document under consideration. The Delegation noted that such an intergovernmental organization should be competent to deal with the subject matter covered under the Lisbon system, but also that there should be some form of transfer of competence to the intergovernmental organization by its member States in order for the intergovernmental organization to be in a position to accede to the Lisbon system. The Delegation also wished to make a distinction between two types of participation by intergovernmental organizations in the Lisbon system: one would be in an observer capacity with a right to vote on behalf of their members; the other would be as full members of the Lisbon Union.
39. The Representative of the EU welcomed the Study on the Relationship Between Regional Systems for the Protection of Geographical Indications and the Lisbon System; and on the Conditions for Accession to the Lisbon Agreement by Intergovernmental Organizations. The Representative also recalled – as the EU had also indicated in its reply to the WIPO survey on the Lisbon system – that the EU was in favor of the introduction of the possibility of accession by competent intergovernmental organizations to the Lisbon system. The Representative of the EU, therefore, welcomed the launch of the process aimed to allow for the possibility of future accession to the Lisbon system by intergovernmental organizations and encouraged the International Bureau to present draft provisions to that effect for consideration at the third session of the Working Group.
40. The Representative of CEIPI stated that he was in favor of opening the Lisbon system to regional systems for the protection of geographical indications and of introducing the provisions required to allow the accession of intergovernmental organizations.

41. The Representative of MARQUES agreed that the document identified, in an outstanding manner, the important legal questions that had to be addressed, in particular the difficulty in forming a clear conclusion on the compatibility of the regional systems in question with the Lisbon system and on how the possible accession of the intergovernmental organizations concerned would affect the current situation. One of the issues was to determine the effects of the Lisbon Agreement between member States of the EU. The Representative of MARQUES had doubts as to whether appellations of origin from these member States and registered under the Lisbon system had better rights or other advantages in the EU member States that were party to the Lisbon Agreement than those conferred in respect of appellations of origin which had been registered under the regional registration system of the EU. Such did not seem to be the effect in respect of agricultural products and foodstuffs protected under Council Regulation (EC) No. 510/2006. The situation was less clear in respect of wines, where the EU Regulations in question arguably still left room for national regulation at least in some cases. The Lisbon system could play an important role for the protection of goods that were not the subject of any specific EU Regulation, as in the case of handicrafts. The Representative of MARQUES further indicated that, on the question whether the Lisbon Agreement should be revised or whether a Protocol or a new Agreement should be adopted, a new and more detailed Agreement appeared to be desirable. The early involvement of intergovernmental organizations administering regional systems would allow the legal uncertainties identified to be tackled by the Working Group at an early stage.
42. The Representative of ECTA spoke in favor of the EU joining the Lisbon system and was pleased to see that the EU itself was of the same view. EU Regulations in this area were currently dedicated to agricultural products, foodstuffs, wines and spirits, but should also be introduced in respect of handicrafts or artisanal products, as was the case under the Lisbon Agreement and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement). The Representative of ECTA also underlined the remarkable analysis of the situation in the EU made by WIPO in the document under consideration. The situation in the EU was extremely complex and the Representative of ECTA was of the view that a higher degree of harmonization in the EU would help the EU to join the Lisbon system. The Representative of ECTA concluded by saying that, as far as trademarks were concerned, excellent results had been achieved through the Madrid Protocol, which might, therefore, be taken as a source of inspiration for the future revision of the Lisbon system.
43. The Representative of OriGIn reiterated that OriGIn was strongly in favor of the introduction of the possibility for regional organizations to join the Lisbon system. This would present a tremendous opportunity to increase the number of Contracting Parties of the Lisbon system. The Representative of OriGIn agreed with the criteria identified in the document for determining whether a particular intergovernmental organization would be in a position to join the Lisbon system. Nonetheless, as this could result in an important increase in the number of new registrations, the Working Group might look into the possible extension of the one-year period under Article 5(3) of the Lisbon Agreement.
44. The Chair said that, despite the complexity of the matter, certain conclusions could be drawn from the discussion. First, Part A of the Annex to the document under consideration provided a correct analysis of the actual application of the Lisbon system in regional systems for the protection of geographical indications. Second, although there were still a number of issues that had to be clarified, there was general support for opening-up the Lisbon system for accession by competent intergovernmental organizations. Third, the criteria identified in Part B of the Annex to the document for

purposes of assessing whether an intergovernmental organization would be in a position to accede to the Lisbon system were appropriate, acceptable and relevant. Fourth, some of the problems surrounding the possible accession by certain intergovernmental organizations would have to be solved by those intergovernmental organizations themselves internally.

45. The Working Group took note of the statements made.

46. The Chair repeated the question he had raised the day before so as to know whether the Working Group would agree to ask the Secretariat to prepare, for the next session of the Working Group, draft provisions on the various topics discussed at the present session, so as to allow for a more focused discussion on the further development of the Lisbon system. In his view, such draft provisions should reflect the outcome of the discussions at the present session on both the results of the survey and the study on the relationship between regional systems and the Lisbon system. It should be understood that, as the Working Group had not reached agreement on each and every question, the Secretariat might not be in a position to come up with a single set of draft provisions, but would need to present alternative versions on certain issues. Moreover, as no conclusion had been reached on whether any agreement on any such draft provisions should eventually be adopted by virtue of amendments to the Lisbon Agreement, a revision of the Agreement, a Protocol to the Agreement or by virtue of a new treaty, the Secretariat would need to present the draft provisions in a way that would be neutral in that respect. If the Working Group agreed, he would reflect this in the draft of the Summary by the Chair. Consequently, the Summary by the Chair would reflect the conclusions arrived at in respect of the individual questions of the survey, as discussed on the basis of document LI/WG/DEV/2/2 as well as those arrived at in respect of the study on the relationship between regional systems and the Lisbon system, as discussed on the basis of document LI/WG/DEV/2/3. In addition, the Summary by the Chair would indicate that the Working Group would like the Secretariat to prepare draft provisions on the issues discussed, leaving it for the future to consider what legal technique should be employed to formalize any agreement that might be reached on any such draft provisions.

47. The Working Group so agreed.

AGENDA ITEM 6: RESULTS OF THE SURVEY ON THE LISBON SYSTEM

48. Discussions were based on document LI/WG/DEV/2/2².

² Document LI/WG/DEV/2/2 Corr. contains a number of corrections to the French version of document LI/WG/DEV/2/2, as read out by the Secretariat at the beginning of the discussion of the Agenda Item.

49. The Chair recalled that at the first session of the Working Group, in March 2009, it had been agreed that the International Bureau would conduct a survey with a view to ascertaining how the Lisbon system might be improved in order for the system to become more attractive to users and prospective new members while preserving the principles and objectives of the Agreement. He further recalled that at its twenty-fifth (18th ordinary) session the Assembly of the Lisbon Union had taken note of that initiative, when renewing the mandate of the Working Group. The Chair also indicated that in the framework of that survey the International Bureau had circulated a questionnaire, in response to which 36 contributions had been received.
50. The Secretariat said that the questionnaire had been circulated to all WIPO Member States and put on the Lisbon pages on the WIPO website in October 2009. While input had been requested by the end of the year, responses to the questionnaire had actually been received between November 2009 and June 2010. The document had been posted on the WIPO website on June 18, 2009. The full text of all the individual contributions had also been posted on the WIPO website, albeit only in the language in which they had been received. Document LI/WG/DEV/2/2 contained a summary of the points made in the various contributions.
51. As regards the structure of the document, the Secretariat said that the same order had been used as in the questionnaire, as most contributions had followed the same format (even though not all contributions had responded to all questions). An attempt had been made to facilitate discussion of the various questions as much as possible. Thus, under each heading of the summary, the document, first, repeated the question, followed by a short explanation as to what had been the purpose of the question (as it appeared from the different contributions that the questions had not been understood by all in the same way). Then, the provisions of the Lisbon Agreement, the Regulations, or the Administrative Instructions that were relevant to the question had been reproduced. And finally the points contained in the various contributions had been summarized. Whenever possible, this had been done under the heading "Conclusions" or "Main Conclusions", when there appeared to be a large degree of consensus on a specific point. On the contrary, views expressed by only a few contributions, or points on which conclusions seemed premature, had been summarized in subsections under headings reflecting the specific topic concerned.
52. Finally, the Secretariat indicated that the document showed several inter-linkages between topics, and therefore proposed ordering and grouping the questions. In particular, Question 2 had better be discussed prior to Question 1 and Questions 1, 3 and 4 might need to be discussed together. Further, Questions 3 and 9 contained inter-linkages on the issue of the relationship with trademarks, while Questions 6 and 8 were inter-linked on the issue of grounds for refusal or invalidation.
53. The Chair agreed that the various questions had better be dealt with in a somewhat different order than the one followed in the document under consideration. He proposed to take up first Question 2 (Definitions), followed by Questions 1, 3 and 4 (Basis for Protection in the Country of Origin and Scope of Protection). Then, Question 5 (Application and Registration Procedures) would be taken up, followed by Question 6 (Declarations of Refusal), Question 9 (Prior Users), Question 7 (Generic Appellations), Question 8 (Notification of Invalidations) and finally Question 10 (Other Issues). Part of Question 3 would be discussed when Question 9 would be taken up and part of Question 8 would be addressed in the discussion of Question 6, as suggested by the Secretariat.

54. The Chair further proposed to discuss the individual questions from two main aspects; first, it had to be ascertained whether the document fully and accurately reflected the views expressed in the various contributions received by the International Bureau; thereafter, the focus of attention should be on what conclusions could be drawn from the analysis in the document. He suggested that the Working Group should analyze the document with a view to determining per question what improvements to the Lisbon system could be achieved as a result and how those improvements could be brought about, i.e., whether they would require formal amendments to the current legal framework or might be achieved by way of a common understanding of the provisions in question.

Question 2: Terminology and Definitions (paragraphs 10 to 27)

55. The Secretariat indicated that, as specified in paragraph 11 of the document, the aim of the question was to explore whether an amendment to Article 2 of the Lisbon Agreement was necessary or desirable to improve the Lisbon system. Many countries had in their national laws definitions for appellations of origin, but there were also many countries with definitions in their national laws for geographical indications, and countries that had both definitions in their national laws. Moreover, these definitions did not all literally follow the definitions of the Lisbon Agreement (appellation of origin) or the TRIPS Agreement (geographical indication): variations of the definitions existed as well. There were also national systems which did not contain definitions of those terms, but dealt with the protection of geographical indications without a definition. The Secretariat recalled that the issue of definitions had been heavily discussed at the Diplomatic Conference of 1958 where the Lisbon Agreement had been concluded, as reflected in the Acts of the Diplomatic Conference and reflected in document LI/WG/DEV/2/3, that was on the agenda of the present session of the Working Group under Item 5. He referred, in particular, to paragraphs 34 to 36 of that document. The history of the negotiations of the Lisbon Agreement showed that the view of the negotiators was that “where the laws of numerous countries did not distinguish between appellations of origin and indications of source, these countries could only adhere to the Agreement if the Agreement would give a clear indication as to what was an appellation of origin meeting the requirements of the Agreement.” The Secretariat quoted from the Acts of the Diplomatic Conference in 1958 and stated that “by introducing a definition for appellations of origin into the Agreement itself such definition could be invoked for the purposes of registration without prejudicing a national definition whether broader or more precise in scope.” As indicated in paragraph 35 of document LI/WG/DEV/2/3, “such a definition could be invoked by authorities of countries refusing protection in their territories and would also serve as a yardstick for national courts to assess whether any given geographical denomination, even when registered as an appellation of origin, did actually fall under the terms of the Lisbon Agreement.”
56. The Secretariat further said that, on several occasions, and again in some of the contributions to the survey, the suggestion had been made that products of traditional knowledge should be registrable under the Lisbon Agreement. However, such registration was already possible given the fact that the Lisbon Agreement did not exclude any category of products.

Appellations of Origin and/or Geographical Indications? (paragraphs 15 to 20)

57. The Secretariat indicated that the main conclusion that could be drawn from the responses to the questionnaire was, as reflected in paragraph 14 of document LI/WG/DEV/2/2, is that Article 2 of the Lisbon Agreement should cover both appellations of origin and geographical indications. This was the prevailing view in the contributions. Differences of view existed, however, as to how the Agreement should refer to appellations of origin and geographical indications. The majority view expressed in the contributions was that there should be two definitions in the Agreement, one for appellations of origin and the other for geographical indications. Yet, another view expressed was that there should be only one definition that would cover both appellations of origin and geographical indications. Consequently, the main issue to be addressed by the Working Group was whether there should be one combined definition or two separate definitions for appellations of origin and geographical indications in the Lisbon Agreement.
58. The Chair indicated that the first question to be addressed was whether the Working Group could agree to the main conclusion of the document concerning Question 2, namely that Article 2 of the Lisbon Agreement should cover both appellations of origin and geographical indications. Would there be agreement on that conclusion, then the Working Group would have to determine whether a second definition should be added to the one contained in the present text of the Agreement, or the already existing definitions should be merged. In this connection, a question also arose as to the choice of the legal technique to be employed for formalizing such a change: should this be done by virtue of an amendment of the Agreement, or a Protocol to the Lisbon Agreement, or by concluding a new treaty?
59. The Delegation of Italy expressed the view that Article 2 of the Lisbon Agreement should be modified so as to include a definition for appellations of origin and geographical indications. The provision should be aligned with Article 22 of the TRIPS Agreement and also take account of the definitions that applied under EU legislation. There was no need to replace the term "appellation of origin" by "international appellation of origin". Regarding the type of instrument that could be used to make the necessary amendments to the Lisbon Agreement, the Delegation indicated that a Protocol to the Agreement was not the only option.
60. The Delegation of Israel was of the view that the definition of appellation of origin and the definition of geographical indication were such that appellations of origin were a subset of geographical indications. Replacement of the definition of appellation of origin by the definition of geographical indication would be a more utilitarian way to proceed, in view of the purpose of achieving participation in the Lisbon system by more countries.
61. The Delegation of Iran (Islamic Republic of) emphasized that their Government was not opposed to amending the Lisbon system, but still had some concerns regarding the goals and the mandate of the Working Group. In any event, it was important that the integrity of the system be maintained and that the changes would not weaken the system. As regards definitions, the Delegation pointed out that under its national legislation a broad definition applied which encompassed both the definition of the Lisbon Agreement and the definition of Article 22.1 of the TRIPS Agreement. The Delegation would be grateful for an explanation of the difference between geographical indications and appellations of origin under those two definitions. The Delegation did not believe that the

definition of Article 2 of the Lisbon Agreement should be replaced by the definition of the TRIPS Agreement; instead, the Working Group should try to improve the definitions already contained in the Lisbon Agreement. The Delegation was not in favor of using the term "international appellation of origin", as it was not clear to them what purpose this would serve.

62. The Delegation of Portugal indicated that it would prefer to have two separate definitions in the Lisbon Agreement, one for appellations of origin and the other for geographical indications.
63. The Delegation of France started by commending the work done by the International Bureau on the Internet site of the Lisbon system. The Delegation stated that it supported maintaining the definition of appellation of origin in its current form, with perhaps some drafting improvements in particular to include the notion of traditional denomination which was an essential part of the current definition but which merited clarification, and also, the inclusion of the changes in the international context with the implementation of a new definition which would supplement the definition of appellation of origin and which would be a definition of a geographical indication close to that contained in the TRIPS Agreement.
64. The Delegation of France added that it believed it was important to maintain a distinction on two levels, not simply to copy EU Regulations, since that was not the purpose of an international organization, but to have differentiated products and to maintain a historic system such as the appellation of origin system which met specific requirements, in particular with reference to "natural and human factors" which might be difficult to preserve in a definition of geographical indications. The Delegation thought that such products, which certainly had their place in international trade and which represented in particular in France a significant portion of its trade balance, required a specific system of protection and identification at the international level. Moreover, the Delegation indicated that it was concerned that given the discussions which had, or rather had not, taken place at the WTO on the issue of geographical indications, transforming the Lisbon Agreement into a TRIPS clone was not a good opportunity. That would only transfer the difficulties encountered in the context of the WTO to the Lisbon Agreement, which, even if its membership was limited, had still proved its effectiveness in settling some difficulties throughout the world and was still today arousing interest in accessions. The Delegation concluded by stating that in such a case it was worth retaining the specific criteria of the Lisbon system and not necessarily copying what existed elsewhere. The Delegation then requested clarification on the proposal to recognize the definition of a geographical indication in the framework of a Protocol, and indicated that in particular it wished to understand how a Protocol could be framed with an Agreement.
65. The Delegation of Hungary agreed with the Delegation of France as well as with the Delegation of Iran (Islamic Republic of) that the definition for appellations of origin should be preserved and should not be amended in a way that would weaken the protection under the Lisbon system. The Delegation was not opposed to the insertion of a new definition into the Lisbon system, but this should not be to the detriment of the existing definition for appellations of origin.

66. The Delegation of the Republic of Moldova indicated that under its domestic law there were two different definitions for appellations of origin and for geographical indications that were protected as two different objects of industrial property. Therefore, the Delegation supported the views expressed by the Delegations of France and Portugal, and also believed that the amendment should consist in the addition of a new definition for geographical indications, instead of merging together the definitions for appellations of origin and geographical indications.
67. The Delegation of the former Yugoslav Republic of Macedonia started by thanking the Secretariat for its help in the preparation of its country's accession to the Lisbon Agreement. The Delegation also wished to join the Delegation of France in congratulating the International Bureau on the improvements to the Lisbon pages on the WIPO website. Turning to the substance under discussion, the Delegation indicated that its national law provided for two definitions, one for geographical indications and the other for appellations of origin. However, the country's main interest appeared to be in appellations of origin, as, to date, only appellations of origin had been registered and no geographical indication.
68. The Delegation of Peru said that the Lisbon Agreement should be revised to improve it and make it more attractive for the accession of new States. However, it was also concerned with retaining the spirit of the Agreement. In that regard, the Delegation believed that the definition of appellation of origin should not be amended, but rather a definition of geographical indication should be introduced, which would allow other countries which regulated such objects to join.
69. The Delegation of Romania stated that it found itself in a somewhat paradoxical position since Romania was a signatory to the Lisbon Agreement of 1958, but had never ratified the Agreement. The Delegation also underlined that geographical indications were covered by its national law on trademarks. It then added that there were, in Romania, also internal discussions on the terminology used, appellations of origin and geographical indications, in particular with respect to the definition contained in the TRIPS Agreement. The Delegation stated that it was in favor of an explanation on the different concepts used. Moreover, the Delegation indicated that it did not share the idea of introducing new concepts on appellations of origin and geographical indications, since it believed that what existed was largely sufficient.
70. The Representative of CEIPI recalled that CEIPI was behind the proposal to introduce a possible Protocol as mentioned in paragraph 19 of the working document, and on which statements had been made by the Delegations of France and Italy. The Representative of CEIPI specified that the reason why CEIPI had made that proposal was precisely because of the concern not to weaken the current Lisbon Agreement, whilst remaining open to some amendments and above all to the desire to be able to integrate not only intergovernmental organizations such as OAPI and the EU, which CEIPI also favored, but also countries which for various reasons had stayed outside the Lisbon system until now. In such circumstances, the Representative insisted on the fact that it was worth keeping in mind that concern of the current member States not to weaken the Lisbon system, and that the idea of the Protocol was specifically to allow current member States to retain the application of the Lisbon Agreement in their mutual relations even if they acceded to a new text which might be a Protocol or a Revised Act of the Agreement, as the case might be. In that situation, the normal rule of international public law was that the new text would apply to the relations between such countries, but it was also possible to make an exception, as had been the case in the context of the Madrid system. Moreover, provision could be made in a Lisbon Protocol for two States to decide bilaterally at a later

date to abandon safeguarding of the Lisbon Agreement and henceforth apply the new text in their mutual relations if they considered this desirable. The Representative of CEIPI added that the mechanism would consist of enabling current member States to keep not only the current definition of the Lisbon Agreement but also the scope of protection in their mutual relations, and to apply, with the new member States of the Lisbon Union, a more flexible and less demanding system than the current Lisbon system.

71. The Delegation of Germany said that it was certainly not in favor of weakening the Lisbon system, but that perhaps the Protocol avenue proposed by the Representative of CEIPI could be further explored. This had very well functioned in the context of the Madrid system. In addition, the Delegation said that, if the Lisbon Agreement, or a Protocol to the Agreement, would have a definition for appellations of origin that would incorporate the notion of "reputation", Germany might consider joining the Lisbon system.
72. The Representative of INTA first wished to congratulate the International Bureau on the excellent improvements to the Lisbon pages on the WIPO website, both as regards content and user-friendliness. Turning to the substance under discussion, the Representative indicated that it had to be borne in mind that the Lisbon Agreement was designed and developed to protect a specific type of geographical indications, namely appellations of origin, for which the establishment of an intrinsic link between the qualities of the product and the territory of production was required. Article 22 of the TRIPS Agreement contained a broader definition but also had a different scope of protection. The Representative of INTA raised the question whether a broader definition could actually devalue the concept of appellations of origin and endanger its functioning. In other words, could it be that with a broader definition the function for which the Lisbon system was developed would no longer be fulfilled in the same manner? Could this result in the protection of terms on the basis of a scope of protection that might not be justified as they might not fulfill the requirement of a specific link with the territory?
73. The Representative of MARQUES also thanked the International Bureau for the major improvements to the Lisbon pages on the WIPO website. Turning to the substance under discussion, he pointed out that it was often difficult for users to understand the differences in terminology, and that it would therefore help to use the expression "international appellations of origin" for appellations registered under the Lisbon Agreement. He added that the addition of the word "international" had been very useful in the area of trademarks to distinguish international registrations under the Madrid system from registrations under national or regional systems. This had contributed to making it clear to entrepreneurs and practitioners that, whenever the term "international trademark" appeared, a specific set of regulations applied.
74. The Delegation of Cuba remarked that the concept of trademarks and that of appellations of origin differed from several points of view, and that those were well delimited in their respective definitions. The Delegation added that although the Lisbon Agreement could certainly be revised and improved, there would be no need to compare it to trademarks as such, since from the point of view of the Delegation it would be entering into a distortion of the original intent of and context of appellations of origin. In other words, that concerned improving the Lisbon system without losing sight of the principles and objectives on which the Agreement was based. Therefore, the Delegation of Cuba believed that it was extremely important to maintain the spirit of the Agreement, as the Delegation of Peru had underlined, and that although it was conceivable to include the term "geographical indications" in the Agreement, that point should be analyzed very carefully.

75. The Chair noted that some form of consensus had emerged around the proposal that the Lisbon system should perhaps cover both appellations of origin and geographical indications, and that the definition of geographical indications should basically follow the definition of Article 22.1 of the TRIPS Agreement. In this regard, some delegations had advocated a harmonized approach whereby a unified definition would be established covering both geographical indications and – perhaps, as a subset of geographical indications – appellations of origin. On the other hand, an important number of delegations, in particular from contracting countries of the Lisbon Agreement, had indicated that they were strongly in favor of maintaining the integrity and the fundamental principles and objectives of the current system. They were clearly in favor of maintaining the current definition of appellations of origin in Article 2 of the Lisbon Agreement, but had also expressed their willingness to consider adding a second definition that would cover geographical indications as defined under the TRIPS Agreement. The first question that had to be asked was, therefore, whether those delegations preferring a unified definition could also live with a system in which there would be two complementary definitions, one for appellations of origin as defined under Lisbon, and one for geographical indications as defined under the TRIPS Agreement. Such a solution might preserve the traditional and somewhat stricter criteria for protecting appellations of origin, but would also open the door of the Lisbon system to those countries that are looking for an international registration mechanism for the protection of their geographical indications, which might not fall under the scope of the current definition of Article 2 of the Lisbon Agreement.
76. The Chair pointed out that the introduction of two separate definitions, or titles of protection, might have an impact on the relevant provisions dealing with the scope or content of protection. However, that issue would be dealt with under Questions 1 and 3. He further recalled that the Delegation of Iran (Islamic Republic of) had inquired about the differences between the two definitions and invited the Secretariat also to clarify what legal techniques were available to develop the Lisbon system.
77. The Secretariat said that, if the definitions of the Lisbon Agreement and the TRIPS Agreement were put next to one another, the following differences could be identified: (i) “denomination” (Lisbon Agreement) as opposed to “indication” (TRIPS Agreement); (ii) a geographical indication (TRIPS Agreement) can be based on “quality, reputation or other characteristic”, whereas an appellation of origin (Lisbon Agreement) must be based on “quality or characteristics”; and (iii) a link between the qualification requirements and the product’s origin (TRIPS Agreement) as opposed to the geographical environment – to be determined by natural and human factors – of the area where the product originates (Lisbon Agreement). Referring to various national laws and WIPO documentation on the matter, the Secretariat indicated that the third difference was probably the most crucial one. As regards “reputation”, it should, furthermore, be noted that, under Article 2(2) of the Lisbon Agreement, an appellation of origin should have a certain “reputation”. Whether that reputation should be such that the appellation is well known in the country or whether a local reputation would be sufficient, is not specified in the text. The Secretariat indicated that some national laws would appear to allow for local renown or reputation to be sufficient, whereas other national laws would rather appear to require the appellation to be well known.
78. As regards the techniques that could be used to develop the Lisbon system further, the Secretariat indicated that it was possible to use a Protocol solution, if the conclusion of the Working Group would be to go for one definition. On the contrary, if the Working Group decided to go for two definitions, a Protocol with a safeguard clause, such as the one that had existed under the Madrid system, might not be useful. Obviously, the response to the question concerning the possible technique to be used to put a new

system in place was largely linked to the orientation of the future debates of the Working Group. It was also important to note that the Working Group was a body established by the Lisbon Union Assembly and consisting of member States of the Lisbon Agreement and observers. It was interesting, though, that, from the outset, the member States of the Lisbon Agreement had shown an interest in adapting the system for the purpose of allowing the Lisbon system to attract a wider membership. Indeed, there were a large number of countries in the world which had implemented their obligations under the TRIPS Agreement and would like to be able to benefit from an international registration system to protect their geographical indications. The issues that still prevented conclusion of the negotiations on geographical indications in the WTO were non-existent in the context of the Lisbon system. If countries could reach consensus on a revised Lisbon Agreement or a Protocol amending the Lisbon Agreement, or a totally new instrument, it would not appear to be logical if these issues could stop them from formalizing such a consensus.

79. The Chair – referring to the Secretariat's comment that, if the Lisbon Agreement were to include two definitions, the Protocol option with a safeguard clause would not be useful – asked the Secretariat to clarify how a revised Lisbon Agreement containing two definitions would work: would new member countries joining to protect their geographical indications through international registration under the new treaty be bound to protect the appellations of origin of the Contracting Parties of the current Lisbon Agreement in accordance with the current scope of protection?
80. The Secretariat said that the issue raised by the Chair would come up under Question 1, in particular in connection with paragraphs 7 and 8 of the working document under consideration, which alluded to the possibility of two definitions in the Agreement and the issue concerning countries that had only one definition *vis à vis* countries that had two definitions in their national law: or, more generally, what if there were different titles with different levels of protection and different qualification requirements between the country of origin and another member State? Nevertheless, the Secretariat wished to note that the majority view would appear to be that appellations of origin were a subset of geographical indications definition, which would have as a consequence that appellations of origin were, in members of the WTO, subject to the provisions of the TRIPS Agreement. In other words, an appellation of origin registered under the new treaty would be protected, in a member country having only a definition for geographical indications in its national law, as a geographical indication. The reverse situation would be more difficult: what would be the situation of a geographical indication registered under the new treaty in a member country that only had a definition for appellations of origin in its national law or in a member country that had two definitions? Although this problem might be less prominent in practice, as most countries had either both definitions in their national law or at least a geographical indication definition as a result of their obligations under the TRIPS Agreement, it could not be ignored. The Secretariat recalled that it would appear that countries that only had a definition for appellations of origin in their national law would probably only protect those geographical indications from other member countries that would meet the requirements for protection as an appellation of origin under the new treaty. Similarly, those countries having two definitions in their national law would probably only protect those geographical indications – from member countries only having a definition for geographical indications – as appellations of origin which met the requirements for protection as an appellation of origin under the new treaty.

81. The Delegation of Israel indicated that the questions raised were intertwined with the questions concerning the scope of protection. In this connection, it was important to take into consideration that the definition of an appellation of origin under the Lisbon Agreement was narrower than the definition of a geographical indication under the TRIPS Agreement, i.e., it was more difficult to achieve appellation of origin status than geographical indication status, due to the higher eligibility requirements. The scope of protection under the Lisbon Agreement (for appellations of origin) and under the TRIPS Agreement (for geographical indications) were equally different. Therefore, if the idea was to have a two-tiered system, the TRIPS geographical indications definition could be more or less incorporated together with its scope of protection – including the exceptions – into the Lisbon Agreement. Arrangements would then have to be worked out, as indicated by the Secretariat in connection with paragraphs 7 and 8 of the working document. If the decision was to go for a unified definition, i.e., the geographical indication definition of the TRIPS Agreement, there would be the advantage of a broader eligibility, but this would not obviate the elaboration of such arrangements.
82. The Chair noted that the Delegation of Israel, although having expressed a preference for a unified definition, could also live with a two-tiered system, in which two definitions, one for geographical indications and the other for appellations of origin, would coexist.

Coverage of the Term “Geographical Denomination” (paragraphs 21 and 22)

83. The Secretariat said that the issue raised here was to determine whether Article 2 of the Agreement had to be amended so as to allow for the registration of appellations of origin or geographical indications which consisted of a name, a sign or an indication that was not geographical but which nevertheless referred to a geographical area. The question was whether the Agreement had to be amended to allow for the registration of such appellations of origin or geographical indications to be recorded in the International Register. Some did not consider this necessary, because the word “denomination” could already be interpreted in a broad way covering such particular appellations of origin and geographical indications. Others had nonetheless put that assertion into doubt. Consequently, delegations should discuss whether the Agreement had to explicitly allow for such geographical indications or appellations of origin to be recorded as well.
84. The Delegation of Portugal expressed a view in favor of allowing the registration of non-geographical denominations which were traditionally known as designating a product as originating in a specific region or place, while indicating that both EU and Portuguese legislations contained provisions to that effect.
85. The Chair concluded that non-geographical denominations with a traditional geographical connotation should be included in the definition for appellations of origin. This could be achieved either by agreeing on a common interpretation of the current definition or by amending the relevant provision to that effect.

Trans-Border Areas; Notion of “Country of Origin” (paragraphs 23 to 25)

86. The Secretariat recalled that various contributions had made the point that Article 2(2) of the Lisbon Agreement concerning the definition of “country of origin” had to be refined: it should not only refer to “country of origin”, but also accommodate for the registration of appellations of origin or geographical indications coming from an “intergovernmental organization of origin”.

87. Another issue concerned appellations of origin or geographical indications that came from two or more countries, in other words products that originated in trans-border areas which generated the same type of products protected by appellations or geographical indications, or maybe a group of countries such as the Caribbean islands which may produce the same products and might wish to protect them by a geographical indication or appellation of origin.
88. In order to allow for the accession of intergovernmental organizations, the Delegations of Burkina Faso, Cuba, France, Hungary, Italy and Peru supported adaptation of the term "country of origin"; some of them expressed their agreement with the term "Contracting Party of origin".
89. The Delegation of Burkina Faso explained that it wished that an amendment would be made to enable OAPI to accede to the Lisbon Agreement. The Delegation added that it was effectively one of the four countries which were both members of OAPI and the Lisbon Agreement. However, it wanted other member States of OAPI to be able to benefit the Lisbon Agreement also, following prior consultations between OAPI and its member States which were also party to the Lisbon Agreement.
90. The Delegation of Cuba clarified that it fully supported the proposal to enable intergovernmental organizations to become parties to the Lisbon Agreement, provided that that was achieved in accordance with the principles and objectives of the Agreement. The Delegation added that it was completely in agreement with the need to expand the number of members of the Lisbon Agreement provided that there was no deviation from what the Agreement had been to date, and also noted that in any case there had been new accessions in recent years.
91. The Delegation of Portugal acknowledged that there was a need to accommodate the accession by intergovernmental organizations and the registration of appellations or origin concerning products from trans-border areas; however, the Delegation needed more time to think about those proposals.
92. With respect to the notion of trans-border areas, the Delegation of Israel was of the view that enabling different countries to register jointly appellations of origin or geographical indications for products from trans-border areas was a good idea. However, it should not be so that the countries in question would have no option but to register such appellations of origin or geographical indications jointly.
93. The Delegation of Iran (Islamic Republic of) was of the view that the Lisbon system already offered a good solution regarding the registration of homonymous appellations of origin, and further indicated that the introduction of a new notion of trans-border area appellations of origin could unnecessarily complicate the system.
94. The Delegation of France stated that it was in favor of adapting the system to enable the registration of appellations of origin and geographical indications for products originating from trans-border areas.
95. The Delegation of Burkina Faso noted that there were common borders between OAPI countries where similar products were grown or produced, and that it was consequently in favor of registering common appellations of origin in such a scenario.

96. The Chair said that the issue of trans-border geographical areas was not to make it mandatory for the countries concerned to file joint applications regarding geographical indications originating in trans-border areas, but rather to provide an option in this respect for interested contracting countries.
97. The Chair invited the Secretariat to clarify the difference between geographical indications or appellations of origin from trans-border areas and homonymous geographical indications or appellations of origin, while expressing the view that geographical indications or appellations of origin from trans-border areas referred to a single and unified area whose name constituted the geographical indication or appellation of origin and which, for whatever reason, was not restricted to the territory of a single contracting country. In contrast, homonymous geographical indications or appellations of origin concerned two different geographical indications or appellations of origin relating to two different areas, which happened to have the same name.
98. The Secretariat agreed with the Chair that trans-border area appellations of origin or geographical indications were not necessarily always homonymous appellations of origin or geographical indications. However, if a region whose name constitutes an appellation of origin or a geographical indication is split between two countries, thus becoming a trans-border area, it may happen that the products concerned become subject to two national laws with different requirements for production. In such a case, the difference with homonymous geographical indications or appellations of origin would be less clear.
99. The Chair indicated that he had heard no opposition to the idea of facilitating the possible accession of intergovernmental organizations.

*Quality, Reputation, Characteristics and the Link to the Geographical Environment
(paragraphs 26 and 27)*

100. The Secretariat indicated that the last sub-section under Question 2 in the document concerned the qualification requirements under the definitions of the TRIPS Agreement and of the Lisbon Agreement. These qualification requirements were phrased in a different way in the definitions of the two Agreements, but were, in several respects, similar. There were differences though, for example, in respect of the notion of “reputation”. Reputation was a qualification requirement in the definition for geographical indications of the TRIPS Agreement but not in the definition for appellation of origin of the Lisbon Agreement, even if the Lisbon Agreement did refer to “reputation” in the definition of “country of origin”. The issue to be addressed concerned the meaning of the notion of “reputation” in the context of the definitions for appellations of origin and geographical indications, respectively.
101. The Secretariat further said that there was also a question raised by one contribution, which referred to the notion of “natural and human factors” contained in the definition of the Lisbon Agreement. The contribution in question suggested that this had to be amended so as to read “natural or human factors”. In that connection, the Secretariat also drew the attention of delegations to the fact that, for example, the Chinese law for the protection of geographical indications contained a definition which referred to natural or human factors.

102. The Delegation of Italy considered it very important to introduce the notion of “reputation” in paragraph 1 of Article 2 of the Lisbon Agreement, even if the term “reputation” was already included in the second paragraph of Article 2, as such addition would assure a stronger protection of product quality.
103. The Delegation of Israel said that, if a definition of geographical indication would be introduced in the Lisbon system, drafted in conformity with the TRIPS definition, in which reputation alone seemed to be one of qualification criteria for a geographical indication, the question concerning the notion of “reputation” would be already answered.
104. The Delegation of Portugal was of the view that, if it were decided to have two separate definitions, one for appellations of origin and the other for geographical indications, the notion of “reputation” should be included in the definition of geographical indication.
105. The Delegation of France stated that as regards the criteria, it was in favor of including an explicit reference to natural and human factors, as both were inseparable in the definition of the characteristics of a product. Also, with respect to notoriety, the Delegation underlined that that was a somewhat complex issue insofar as it would first be appropriate to reach agreement on a common definition of the concept of notoriety, and added that in France there were two different words, namely the word “notoriety” on the one hand and the word “reputation” on the other. It then remarked that the notion of “notoriety” in French corresponded to “reputation” in the English version of the Lisbon Agreement, and in such a case believed that it was perhaps useful first to define the word “notoriety” and to define its scope of application, for instance should this be local or rather international notoriety? Was notoriety assessed in each of the countries which would have to examine the registration application?
106. The Delegation of Hungary believed that “reputation” certainly was an important factor, but “reputation” alone could not justify the grant of such an extraordinary level of protection as the one conferred under the Lisbon Agreement on Appellations of Origin.
107. As regards the requirement of “reputation”, the Delegation of Peru stated that in its view that was a factor which could or could not exist in “appellations of origin” but that it should not be the only criterion, i.e., by itself it cannot be sufficient to conclude that it concerns an appellation of origin. The Delegation was, therefore, of the view that the current requirements for appellation of origin should be maintained.
108. The Delegation of Cuba stated that in its view, and as regards appellations of origin, the notion of reputation could not be separated from the natural and human factors contained in the definition.
109. With respect to the notion of “notoriety”, the Delegation of Romania stated that the concept should be included in the definition but that the difference or similarity between notoriety and reputation should nevertheless be clarified. The Delegation also expressed its support for the statement of the Delegation of France as regards the other criteria of the definition.
110. The Delegation of Germany indicated that the notion of reputation was very important for German users, as was evidenced by the fact that most of the German geographical indications registered under EU legislation were based on reputation. The notion of reputation was also incorporated in the provisions on geographical indications in the German trademark law.

111. The Chair said that views certainly differed on the issue of reputation. Perhaps, if the Working Group would agree on having two definitions under the Lisbon system, lengthy discussions on whether or not to include “reputation” in the current definition of appellations of origin might be avoided altogether.
112. The Secretariat recalled that, for the previous meeting of the Working Group, it had prepared a general overview of the Lisbon Agreement, which had been discussed to some extent by the Working Group at the time, but on which the Working Group had agreed to revert to at the second meeting of the Working Group. Nevertheless, the document in question had not been included as a separate issue on the agenda of the present session, as its content was basically incorporated in the working document under consideration. In connection with the issue of “reputation”, however, the Secretariat wished to recall that, in this general overview contained in the Annex II to document LI/WG/DEV/1/2, and more specifically in its paragraph 7, it was indicated that Article 1(2) of the Lisbon Agreement laid down that “in order to qualify for international registration an appellation of origin must be recognized and protected in the country of origin”, and that all those notions (e.g. country of origin, appellation of origin) were defined in the Agreement itself. Even though there was not a definition for “recognized and protected as such”, the meaning given to those words at the time when the Agreement was concluded was the following: “The appellation of origin must be constituted by a geographical denomination that is protected in the country of origin as the denomination of a geographical area recognized as serving to designate a product that originates therein and meets certain qualifications. Such recognition of the denomination must be based on the reputation of the product and protection of the appellation must have been formalized by means of legislative provisions, administrative provisions, a judicial decision or any form of registration. The manner in which recognition takes place is determined by the domestic legislation of the country of origin.” Quoting from the Acts of the Lisbon Conference of 1958, page 159, the Secretariat indicated that Article 1 of the Lisbon Agreement had been approved with the addition of the term “recognized” before the words “protected as such”, and that such amendment had been considered necessary for bringing the provision into line with the principle that appellations of origin always relate to a product enjoying a certain renown. Thus, the negotiating history of the Lisbon Agreement provided help in determining what was actually meant by “reputation” or “*notoriété*” in the original French text of the Agreement.

Question 1: The Basis for Protection in the Country of Origin (paragraphs 1 to 9)

113. The Chair requested delegations to focus on the following questions: (i) whether they could confirm the flexible interpretation to be given to Article 1(2) of the Lisbon Agreement as outlined in paragraph 5 of the working document, and if so, would they be in favor of formalizing such flexible interpretation and how would they like to bring that about; (ii) what were the participants’ views with regard to the idea of developing a model law; (iii) what was their position with regard to the set of questions in paragraphs 7 and 8 of the working document; and (iv) what was the participants’ position with respect to the issue highlighted in paragraph 9, namely whether the filing of an international application should be preceded by substantive examination in the country of origin.

Interpretation of Article 1(2) of the Agreement (paragraphs 5 to 8)

114. The Secretariat said that the various contributions received, in response to the survey's questionnaire, would appear to confirm that the condition that an appellation must be recognized and protected as such in the country of origin means that the appellation must be constituted by a geographical denomination that is recognized in the country of origin as the denomination of a geographical area or serving to designate a product that originates therein and meets certain qualifications in accordance with Articles 2 and 3. The vast majority of answers to the questionnaire confirmed that, for the implementation of Article 1(2) of the Lisbon Agreement, it was not necessary to have *sui generis* legislation for the protection of appellations of origin; Article 1(2) could also be met by a geographical indication law or any other law, as long as that law met the requirements of Articles 2 and 3 of the Agreement. Many contributions had, nevertheless, advanced that it would be useful to formalize that flexible interpretation, as Article 1(2) had, for whatever reason, over the years, been explained in a more restrictive way. Therefore, it had been suggested to delete the words "as such" from Article 1(2). The Secretariat further indicated that some contributions had suggested that a model law might be developed focusing on the various needs for recognition and protection that existed in the world, and that these would have to be identified per title of protection and per law to determine how the Lisbon provisions could be implemented.
115. As regards the difficult question of mutual relations under the Agreement between countries that had different titles of protection for the protection of appellations of origin or geographical indications under the Agreement, the Secretariat indicated, quoting paragraph 7 of the working document, that "the issue would appear to be that such an amendment of Article 1(2) should take into account that some domestic laws may have one definition – for geographical indications – and other domestic laws two definitions – one for geographical indications and another for appellations of origin. Recognition and protection in a country of origin on the basis of a single definition, as contained in a domestic law of the first mentioned type, may not necessarily provide sufficient information for determining on the basis of domestic laws that contain two definitions, whether both these definitions are met or just one of them." As discussed under Question 2, this issue was, of course, of particular importance if the scope of protection for an appellation of origin under domestic law was broader than for a geographical indication.
116. The Secretariat pointed out that paragraph 7 of the working document also reflected what a significant number of contributions, both from Lisbon member States and non-member States, had advanced, namely that geographical indications in a number of countries were protected not by *sui generis* titles of protection but by certification marks or collective marks, or simply only by unfair competition law or consumer protection law. The question that arose in this respect was how to determine, in respect of those titles of protection, whether the qualification criteria of the Agreement had been met, as specified in paragraph 8 of the working document: "clarification would appear to be required in Articles 1, 2 and 3 of the Lisbon Agreement as to their application with respect to the various means for recognition and protection as may exist at the domestic level." As a result, it should be clear whether protection under a particular title of protection in the country of origin would be acceptable for protection under another title of protection in another member State.

117. The Delegation of France stated that discussions on such concepts and practical arrangements would allow for an update as to the significant differences that had existed between States which had very developed and very old systems and those States which had still very recent systems still being developed, or rather systems which were very flexible. Then, the question would come up about the nature of the mutual commitments which would be concluded, since it was necessary to agree to protect appellations submitted by other States based on trust. The Delegation stressed the commitment of the States in the framework of the Lisbon Agreement, which should be able to trust the systems employed by the other member States. The Delegation stated that it was in favor of a flexible interpretation of Article 1(2), but that it opposed the proposal regarding a model law, as it believed that each country should have legislation which corresponded to its unique characteristics, whereas a model law could not provide for such characteristics.
118. On the issues raised in paragraph 8 of the working document as a whole, the Delegation of France stated that it was in favor of opening-up to all possible systems, albeit with some reservations, in particular regarding the capacity of trademark systems to provide the guarantees for what would need to be recognized in the Lisbon Agreement. The Delegation added that special importance to the "title of protection" granted to an appellation integrated into a specific system of protection, as were systems for the protection of appellations of origin and geographical indications. The Delegation stressed that the trademark system was perhaps not sufficiently effective in this regard, as a study conducted by WIPO in the context of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) on collective marks and certification marks had shown. The Delegation also requested more details on protection systems based on business law, in particular against acts of unfair competition, since such protection occurred after the event, i.e., once the infringement had been ascertained. The Delegation of France considered it inappropriate to go so far as to accept such systems as being sufficient in the context of an international registration system.
119. The Delegation of Peru stated that it understood the reference that an appellation of origin had to be protected as such in the country of origin in the sense that it had to be protected as an appellation of origin, and added that that interpretation was consistent with existing Andean Community legislation in Peru, which required that for an appellation of origin to be recognized in the member country in which protection was sought, it had to be protected in its country of origin as an appellation of origin. In respect of this criterion, the Delegation would not support a more flexible interpretation. Moreover, the Delegation of Peru expressed its doubts as to whether, in the framework of the Lisbon Agreement, it would be sufficient for the appellation of origin to be protected as a collective mark or certification mark in its country of origin, since collective marks or certification marks were subject to different requirements and differed from appellations of origin, which were based not only on being a distinctive sign featuring the name of the geographical place but also on evidence of a link between the characteristics of the product and the geographical environment. Similarly, the Delegation signaled that protection by means of unfair competition legislation was also not sufficient to support that a sign was protected as an appellation of origin in the country of origin, since such protection could apply not only to appellations of origin but also to a simple indication of source, which certainly could not be said to form part of industrial property. In that regard, the Delegation expressed its doubts concerning how those forms of protection might be comparable to that which corresponded to appellations of origin according to the legislation in force in Peru.

120. The Delegation of Italy said that the provisions of the Lisbon Agreement were flexible and broad enough to allow for titles of protection in the country of origin under *sui generis* legislation or any other kind of legislation. There was no need to specify what the meaning of “as such” in Article 1(2) was. These words were flexible enough to cover various titles of protection for both geographical indications and appellations of origin.
121. The Delegation of Portugal agreed that Article 2 of the Lisbon Agreement, by establishing requirements of what an appellation of origin was, did not impose a particular means of protection and registration in member countries. There was no need to amend Article 1(2) of the Agreement.
122. The Delegation of Burkina Faso believed that flexibility was also of interest to those member countries of OAPI that had acceded to the Lisbon Agreement, given that those were countries which did not have very sophisticated operational means to carry out the necessary examinations. The Delegation also added that OAPI wished that the *sui generis* system would be applied to allow some flexibility and that in such a case it also agreed with those who believed that there should be some flexibility of interpretation.
123. The Delegation of Algeria believed that there was no need to amend the Agreement as regards the provisions in question.
124. The Delegation of Romania stated that it shared the same opinion as the Delegation of France which had a long tradition in the field of appellations of origin.
125. The Representative of CEIPI made two points regarding paragraph 6 of the document. Firstly, it recalled that CEIPI was among those who had made contributions in favor of removing the words “as such” from Article 1(2) and had stated on that subject that this concerned allaying doubts regarding the registrability of a protected appellation in the country of origin as a collective or certification mark provided that the appellation in question fulfilled the definition of the subject of protection as set out in the Agreement. Furthermore, with respect to the issue of a model law, CEIPI recalled that there was a “model law for developing countries on appellations of origin and indications of source” published by WIPO in 1975. CEIPI added that even though it was true that that model law was aimed at developing countries, the provisions it contained were of interest to all countries. The Representative of CEIPI admitted that the model law could not take into account all that had been negotiated and discussed over the course of the past 35 years, but that it was nevertheless useful to know that the main body of the model law was based on the idea of a registration as the basis for protection of appellations of origin and moreover, the model law contained two alternatives at the end: the first provided for the replacement of the registration system with a system of special orders and the second combined the registration system with the system of special orders.
126. The Representative of MARQUES suggested the establishment of a list or a system through which the administrations would be able to communicate or notify to WIPO which were the specific titles of protection that they were going to consider and that would comply with the requirements of “appellation of origin recognized and protected as such” in the country. The Representative of MARQUES was of the view that such a system would be good for entrepreneurs and producers, and he recalled that some years ago a similar question had been raised at the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), in the context of discussions to determine which were going to be the national rights which would give the right to prevent the use of

a community trademark or that could be used as the basis for an opposition. It had been of great help to all that OHIM had prepared a list indicating per country which were the titles of protection that could be used for such purposes. For the sake of clarity and to enhance legal security, perhaps, a similar list of existing titles of protection per country might be of benefit in the context of the Lisbon system.

127. The Representative of INTA underlined that in its written contribution INTA had stated that it wished that the notion of “protected as such” be clarified since it was in all likelihood the lack of clarity of this expression which had caused a number of difficulties. Following on from what the Representative of CEIPI had said, the Representative of INTA referred to the legislative history of Article 1 of the Agreement as it appeared from the Records of the Lisbon Conference of 1958. In the explanatory memorandum presenting the draft submitted to the Diplomatic Conference, it was stated that “Each country of the Paris Union acceding to the Agreement undertakes (Article 1) to protect on its territory registered appellations of origin and, as regards the products of the other acceding countries, on the express condition that they are protected on the territory of their country of origin. The term ‘as such’ means that the right to an appellation of origin must be recognized in the first place by the country of origin.” Besides, it was to be noted that the draft submitted to the Conference did not include a definition of the appellation of origin. The International Bureau, at that time, had explained that it had preferred to abstain from defining the appellation of origin “since each country will remain free to define it exactly according to the scope of protection that it wishes to establish”. During the discussion on the text of Article 1, the term “defined” had been added before “protected as such” and it was only after the discussion on Article 2, in paragraph 1 of which a definition of the appellation of origin was introduced, that the term “defined” had been replaced by “recognized” to form the expression “recognized and protected as such”, as the competent commission of the Conference was of the view that the term “recognized” was “more appropriate either for highlighting the general principle of law that the appellation of origin always concerned a product enjoying a certain renown, or for emphasizing its uniqueness compared with indications of source”. Referring to the discussions that had taken place earlier in the current session of the Working Group on the necessary notoriety or reputation of an appellation of origin, the Representative of INTA drew attention to the fact that paragraph 2 of Article 2 existed prior to paragraph 1 thereof and that this might explain why the word “reputation” (in French “*notoriété*”) had not been repeated in paragraph 1 of Article 2 since it already appeared in paragraph 2 of the same article; it had nevertheless always been clear during the Diplomatic Conference that notoriety was required.
128. The Chair concluded that he had heard two fundamental messages from two clearly distinct sources. On the one hand, most contracting countries of the Lisbon Agreement seemed to take the view that there was no need to change Article 1 of the Agreement and the pertaining Rules in the Regulations. These countries also seemed to agree that there was room for a flexible interpretation, although this flexibility was not without limits. The legal means chosen by a contracting country or prospective contracting country should meet the requirements contained in Articles 2 and 3 of the Agreement. The countries in question seemed to be of the view that it was not necessary to formalize such flexibility, as it could already be inferred from the current legal framework. The other message that he had heard was that the flexibility had better be formalized, for example, by deleting the words “as such” from Article 1(2). The Chair noted that views expressed in this sense came almost exclusively from observers. Finally, the Chair stated that the idea of a model law had not gained sufficient support.

Substantive Examination (paragraph 9)

129. The Secretariat said that the issue of substantive examination had been included in the document as a separate item, as a number of contributions had indicated that, whatever the means of protection was in a particular country, the filing of an international application had to be preceded by a substantive examination in that country in order to validate that the denomination in question met the definition under the Agreement.
130. On the issue of substantive examination, the Delegation of France stated that it had difficulty understanding the aim of such a proposal and indicated that a detailed substantive study which might take place in France was not necessarily a requirement which might be imposed on all States. Conversely, what seemed useful to the Delegation was to have a mechanism which provided for the protection of an appellation by the grant of a specific title of protection.
131. The Delegation of Italy said that it was a prerequisite that an appellation of origin be granted only after examination in the country of origin according to the domestic legislation. No other substantive examination should be required.
132. The Chair concluded that most delegations were of the view that the issue of substantive examination should not be addressed at the level of the Agreement or the Regulations. He said that it was his understanding that the issue should be left to the discretion of the contracting countries based on mutual trust *vis à vis* each other.

Questions 3 and 4: Scope of Protection (paragraphs 28 to 47)

133. In its introduction, the Secretariat indicated that Article 3 of the Lisbon Agreement provided that “protection shall be ensured against any usurpation or imitation even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as ‘kind’, ‘type’, ‘make’, ‘imitation’ or the like.” The question was whether there was a need to amend the provision and, in that regard, Question 3 had three purposes. In the first place, it sought to explore whether the scope of Article 3 was generally understood in the same way as explained in the questionnaire, which stated as follows: “Although the Lisbon Agreement does not define the terms usurpation and imitation, its negotiating history would appear to show that these terms are aimed to prevent use of an internationally registered appellation of origin on a product of the same kind which does not originate from the area to which the appellation refers, or a product that does come from that area but which does not meet the quality or characteristics that are required for products under the appellation.” The second aim was to seek feedback as to whether protection on the basis of those terms was considered sufficient. And the third purpose of the question was to explore whether the scope should be extended in order to provide protection also to products that were not of the same kind. In the trademark area, such protection was available in respect of trademarks with a high reputation. The Secretariat said that the summary addressed Questions 3 and 4 together because Question 4 was actually asking whether changes would be required in Article 3 as a result of changes in Articles 1 and 2 of the Agreement, as suggested in response to Questions 1 and 2.
134. The Secretariat said that the main conclusion from the contributions received was that Lisbon member States generally confirmed the understanding that usurpation and imitation related to products of the same kind, whereas non Lisbon States were generally asking for clarification of those terms, as they had difficulties in understanding what they

actually covered. Further, some Lisbon member States appeared to be of the opinion that the scope of protection under Article 3 was sufficient. Several other Lisbon member States, however, had indicated that that was not the case because it should also cover products that were not of the same kind, a view shared by several other contributions, in particular from non-governmental organizations. In this respect, paragraph 40 of the working document listed six categories of criteria for determining such protection, which had been deduced from the various contributions. Each of these criteria approached the issue from a different angle. Paragraphs 41 to 44 further indicated that some of these criteria had been called unacceptable in other contributions. A third item to be discussed concerned new forms of usurpation. In this regard, it had been advanced by some that the development of new technologies, and the Internet in particular, had led to new forms of usurpation, and references to the uniform dispute resolution policy of WIPO and the WIPO Arbitration and Mediation Centre had been made in that regard. The Secretariat suggested that issues concerning the relationship between geographical indications and trademarks be addressed once Question 9 would be taken up by the Working Group.

135. The Chair said that the Secretariat had appropriately prepared the ground for discussions on Questions 3 and 4, since the main issues had been identified and the main conclusion that could be drawn from the contributions received in response to the questionnaire had been clearly presented. He further indicated that, as suggested by the Secretariat, the issue of the relationship between geographical indications and trademarks would be dealt with in conjunction with Question 9 concerning Article 5(6) of the Agreement. He said that the discussion should focus on the following issues: (i) whether the protection conferred under Article 3 on the basis of the interpretation mentioned by the Secretariat was sufficient; and (ii) whether protection should also be extended against use on products that are not of the same kind and, if so, what criteria should be applied.

Scope of the Current Provisions of Article 3 (paragraphs 35 and 36)

136. Referring to the introduction by the Secretariat, the Chair invited delegations to indicate whether they could subscribe to the understanding of the terms “usurpation” and “imitation”, as set out in paragraph 29 of the working document.
137. The Delegation of France stated that it was very familiar with the notions of usurpation and imitation and that there was no ambiguity on that subject although it could appreciate that some delegations were more accustomed to the notion of counterfeiting. The Delegation expressed a reservation on a point contained in paragraph 36 of the working document, namely the idea of submitting protection to an assessment of a risk of confusion. By underscoring the difficulties relating to the demonstration of the risk of confusion, it was of the opinion that the protection of appellations of origin and geographical indications could not be conditioned in such a manner.
138. The Delegations of Iran (Islamic Republic of), Israel, Peru and the Republic of Moldova expressed support for the intervention of the Delegation of France and indicated that they were also of the view that there was no need for any further explanation of the notion of “usurpation or imitation”.
139. The Delegations of Iran (Islamic Republic of) and Italy stressed that appellations of origin should be protected on the basis of the inherent quality or characteristics of the products and not on the basis of distinctive character.

140. The Delegations of Italy and Portugal expressed their preference for replacement of the terms “usurpation and imitation” by more modern terms, for example as expressed in Article 13 of EU Regulation 510/2006, which used concepts such as “misuse”, “imitation”, “evocation”, “exploitation of reputation”. They suggested that Article 3 of the Lisbon Agreement might be modified accordingly.
141. The Delegation of Burkina Faso stated that it wished for more detailed information on the phrase “if the appellation is used in translated form” contained in Article 3, to understand whether this was synonymous with “if the appellation is a translation”. If this were actually the intended meaning of that expression, the Delegation proposed using the second proposed drafting for greater clarity. It also remarked that the same comment actually also applied with regard to the Revised Bangui Agreement, Heading 4, Article 15, which also stated “if the geographical indication is used in translated form”.
142. In response to the question from the Delegation of Burkina Faso, the Secretariat indicated that Article 3 dealt with protection against use by someone who was not authorized to use the appellation of origin in a way which combined the appellation of origin with other words such as “kind”, “type” or “style”, and also against use by a person that used the appellation of origin in a translated form.
143. The Representative of OriGIn suggested that Article 3 might be amended so as to provide explicitly protection against the evocation of appellations of origin and geographical indications. This was a concept already included in various legislations, including that of the EU, and had proved to be a most appropriate instrument for producers. Usurpation and imitation of appellations of origin had become very sophisticated, so that there was a need to stipulate concrete elements of what constituted violations. The Representative emphasized that producers of appellations of origin or geographical indications were often small producers with limited access to legal advice and limited resources.
144. The Representative of INTA agreed that it would be helpful if Article 3 had a clearer wording. There appeared to be quite some uncertainty about the application of the concept of “usurpation and imitation”. The Representative said that Article 13 of EU Regulation 510/2006 was not really a magic tool either, because there was also quite some uncertainty about what “evocation” meant, not the least because of some surprising decisions of the European Court of Justice. The Representative of INTA would suggest that trademark law could provide inspiration, since under trademark law very clear rules existed on what “likelihood of confusion”, “dilution” and “free-riding” actually meant. Trademark offices as well as tribunals were very well accustomed with these standards. The Representative indicated that INTA was aware of the specific nature of appellations of origin and geographical indications, but it should be borne in mind that trademark law pursued similar objectives, such as consumer protection, fair competition and protection of goodwill. Consequently, it would appear that trademark law could be useful in the search for an appropriate and predictable scope of protection.

Use on Products that Are Not of the Same Kind (paragraphs 38 to 44)

145. The Delegation of France stated that the issue of extending protection to products not covered by an appellation was of great importance to France and for some of its most well-known appellations which were frequently subject to harm to their image and to dilution of their attractiveness. The Delegation recalled that, in its contribution to the survey, France had proposed certain criteria to deal with that issue.

146. The Delegation of the Republic of Moldova said that the scope of protection should be enlarged to cover products that were not of the same kind, in light of the fact that a person who uses an appellation of origin without authorization would take unfair advantage of the reputation of such appellation of origin.
147. The Delegation of Israel was of the view that one had to proceed very carefully with such an extension, as there might not be any connection between the product and the appellation. In that respect, the Delegation recalled the example of "*Chianti*", which had been registered both in respect of olive oil and in respect of wine. There might be situations of parallel use in good faith.
148. The Delegation of Italy pointed out that the concept of "evocation" would allow expanding the scope of protection to use on products of a different kind, as long as the reputation of the appellation of origin was exploited.
149. The Delegation of Hungary said that it would welcome an extension of the scope of protection so as to prevent use of the appellation of origin in respect of products other than goods of the same kind, if such use would take unfair advantage of, or be detrimental to, the reputation of the appellation of origin.
150. The Delegation of Portugal also expressed itself favorably in respect of an extension of the scope of protection to products that were not of the same kind, be it on the basis of clear and precise criteria for such a higher level of protection, for example, on a basis analogous to the protection for "prestige trademarks", as under Portuguese law.
151. The Delegation of Peru shared the view that protection should be extended to other cases and that similar criteria could apply as applied under trademark law in respect of "confusion" or with regard to "well-known marks".
152. The Representative of OriGIn said that practical experience showed that there were more and more attempts to benefit from the reputation of appellations of origin in derived products, in particular when the product to which the appellation of origin related was used as an ingredient, even when only one percent of that product was used as an ingredient. In such cases, the lower quality of the other ingredients could ultimately harm the reputation of the appellation of origin. In that sense, the Representative of OriGIn favored the establishment of precise criteria for the extension of the scope of protection to use of the appellation of origin on other products.
153. The Chair was of the view that the discussion that had taken place on Questions 3 and 4 had more or less confirmed the understanding of the Secretariat as regards the replies to these questions of the survey. As far as the first question was concerned, the Chair noted that most of the contracting countries were of the view that the understanding of the terms usurpation and imitation corresponded to the one contained in paragraph 29 of the working document. These countries were also of the view that those terms were clear enough and that there was no need to change them. Other views expressed were calling for either clarification or modernization of those terms. Regarding the question as to whether the protection conferred by those terms was sufficient or not, the Chair believed that there was growing support for the idea of extending, one way or the other, the protection for appellations of origin to products that were not of the same kind as the product to which the appellation of origin directly referred. He noted, however, that diverging views had been expressed as to how such extension to other products should be achieved and what criteria should be applied. While many had spoken in favor of such extension, also words of caution had been expressed.

Question 5: Application and Registration Procedures (paragraphs 48 to 57)

154. The Secretariat said that the purpose of Question 5 was to explore whether the current requirements for international applications were sufficient to allow a proper examination by competent authorities of Lisbon member States. The Secretariat noted that the responses to Question 5 had shown that Lisbon member States were generally of the view that no particular amendment of Rule 5 was necessary, while other countries had generally refrained from a response, as they had no practical experience with the procedures. Nevertheless, a number of suggestions had been made, as reflected in paragraphs 53 to 57 of the working document, under two headings: "Information in the International Application and Access to such Information" and "Requirements Concerning the International Application".
155. The Secretariat said that some contributions had indicated that international applications might be improved in terms of the information they contained, in particular concerning the elements on the basis of which protection had been granted to the appellation of origin. A suggestion had been made that the country that notified an application had to make sure that the link between the appellation of origin and the definition requirements be properly explained in the application and that the relation between the products to which the appellation related and the area of production also be adequately explained. It had also been suggested, alternatively, that the application at least contain an indication as to where that type of information could be found, for example on a website. The reason for those suggestions was that it would help member States other than the country of origin to conduct their own analysis of the international registration and that it would also allow the public and possibly affected traders and trademark holders to be informed properly of the elements on which the appellation was based. A number of contributions had, moreover, suggested that the submission of such additional information in international applications should become a requirement and that, by way of consequence, Rule 5 should be amended.
156. The Secretariat said that another modification that had been suggested was that the application form should allow for the submission of appellations of origin or geographical indications which consist, wholly or partially, of images. Such proposal obviously suggested that denominations could also consist of indications which were not names or words. In that regard, references had been made to Articles 1 and 2 of the Agreement and to Questions 1 and 2 of the questionnaire because, if the Agreement was to be amended so as to allow for geographical indications to be recorded next to appellations of origin under the Lisbon system, then obviously the application requirements should be amended accordingly.
157. Finally, the Secretariat indicated that a suggestion had been made to amend Rule 5 of the Lisbon Regulations in respect of the requirements that the holders of the rights to use the appellation of origin should be identified in the application by name and address and not in a collective manner, as was currently the case. In that regard, the Secretariat drew attention to the fact that the possibility of indicating the holders of the rights to use the appellations of origin in a collective way had been introduced by the Assembly quite recently, namely in 2002. The reason for that amendment had been explained during the Working Group process that had preceded the amendment by the Assembly and was contained in document LI/GT/1/2, as prepared by the International Bureau in 2000, paragraphs 20 to 25, which read as follows: "Where there are a number of owners of the right to use an appellation of origin, it would not seem feasible to give a list of the names of the owners in the framework of the administration of the Lisbon system since there may exist thousands of users of an appellation of origin." If a requirement to identify all

the holders of the right to use the appellation in the application existed, it would be necessary, whenever a new producer joined or left the area of production, to modify the international registration. As this had been considered unnecessarily cumbersome, the possibility had been introduced to refer to the holders of the right to use the appellation in a collective manner.

158. The Chair said that the issues reflected in paragraphs 53 and 54 were almost identical and could, therefore, be dealt with together.

Paragraphs 53 and 54

159. The Delegations of Italy, Mexico, Peru and the former Yugoslav Republic of Macedonia said that the current requirements under Rule 5 were sufficient. Article 1(2) of the Lisbon Agreement, which required that the appellation of origin had to be recognized and protected as such in the country of origin, was a sufficient basis for the recognition of the appellation of origin in the other countries of the Lisbon Union. The Lisbon system was founded on the principle of trust regarding the initial examination in the country of origin.
160. The Delegations of Algeria, France, Iran (Islamic Republic of), Mexico and Peru cautioned against increasing the complexity of the Lisbon system. The aim should rather be to simplify the procedures, as this could help the number of registrations to grow and encourage new accessions.
161. The Delegation of France expressed the view that, if contracting countries were given the exact references, they would have the means to seek all the necessary information by themselves, all the more so since electronic tools facilitating access to information were widely available.
162. The Secretariat indicated that, in respect of the question as to whether the addition of requirements as proposed would be reasonable, what had to be looked at first was how badly users needed the additional information to be provided, in particular so as to allow them to ascertain what was actually protected under the international registration. The majority of contributions to the survey seemed to indicate that the current requirements were sufficient, while some others expressed the view that it might be useful to request such additional information. However, as indicated by the Delegation of France, specific information concerning an appellation of origin protected in a given country was often publicly available on the Internet.

Paragraph 55

163. The Delegations of Burkina Faso and Portugal expressed support for the idea that the information provided in international applications should be improved, in particular as to the boundaries of the production area as well as the connection between the specific characteristics of the product and its geographical environment. The Representative of INTA also expressed the view that international registrations under the Lisbon system lacked sufficient information concerning the fulfillment of the requirements for protection.
164. The Delegations of France and the former Yugoslav Republic of Macedonia pointed out that, if additional technical documents would be required, the translation costs for the International Bureau would increase.

165. The Secretariat said that international applications could be presented in English, French or Spanish and that information presented in one of these working languages that had to be reflected in international registrations would, indeed, need to be translated into the other two working languages, unless the Working Group would decide that information provided under such additional requirements would not need to be translated. As to the “area of production of the product”, the Secretariat said that a requirement to indicate the area concerned was already included in Rule 5 of the Lisbon Regulations. The provisions in question did not specify the degree of precision for the indication of the area, suggesting that a mere identification by the name of the area might normally be sufficient. However, if necessary, the application of this requirement could be made the subject of a new Section in the Administrative Instructions.
166. The Representative of OriGIn stated that the issue of including in the registration elements as varied as the link between the product and the geographical area, or technical documents on the boundary of a given geographical area, should be examined in the light of the interpretation of Article 1(2) in the context of Question 1 of the survey. In that regard, if the Working Group were to conclude that the Lisbon system allowed for the international registration of geographical indications based on protection in the country of origin by certification marks, the inclusion of such additional elements in international registrations could prove to be very useful in terms of strengthening legal certainty and trust.
167. For the same reason, the Representative of OriGIn also drew attention to the fact that, in countries which used certification marks for the protection of geographical indications, the public authority would usually not have the right to file applications on behalf of the producers concerned. Consequently, in line with a flexible interpretation of Article 1(2), consideration should be given to the possibility of allowing the producers themselves, or a producers’ association representing them, to file international applications.

Paragraph 56

168. The Delegations of Burkina Faso, France, Mexico and Peru expressed doubts regarding the suggestion to allow for the registration of images or designs as appellations of origin. Where such registration might be possible in the case of geographical indications, it was difficult to envisage how a design or image could actually serve as an appellation of origin.

Paragraph 57

169. The Delegations of Burkina Faso and France expressed support for the suggestions reflected in paragraph 57. The Delegation of France indicated that, in France, there was an obligation to establish producer organizations.

Rule 8(2) of the Lisbon Regulations

170. The Delegation of the Republic of Moldova suggested that Rule 8(2) of the Lisbon Regulations might be amended, so that the date of the international registration would henceforth no longer be “the date on which the international application was received by the International Bureau”, but the date on which the international application was received

by the competent authority in the country of origin, provided that the competent authority in question would transmit the application to the International Bureau within two months. Thus, the Lisbon system would, in this regard, be aligned with the Madrid system, which would be preferable for users.

171. The Secretariat indicated that the situation under the Lisbon system was not entirely comparable with the situation under the Madrid system. In particular, under the Lisbon system, it was not necessarily the authority that registered the appellation of origin nationally that was also the competent authority for purposes of the procedures under the Lisbon system. Under the Madrid system, it was the same trademark office that had registered a trademark nationally or regionally that could also be the recipient of an international trademark application, which it then had to certify on the basis of the national or regional registration before it could communicate the international application to the International Bureau.
172. The Chair said that, nevertheless, there would always be a competent authority for filing applications with the International Bureau and that such authority would receive the international application on a particular date. However, it might rather be a problem that the procedures that needed to be carried out before the competent authority would be in position to file an international application under the Lisbon system with the International Bureau might take more time than was the case in respect of trademarks.

Appellations of Origin/Geographical Indications Protected on the Basis of Regional Legislation

173. The Delegation of Germany expressed the view that, where in some countries regional legislation might apply instead of national legislation, the reference to “national legislation” in Article 5 of the Lisbon Agreement would appear to require amendment.

Rule 13 of the Lisbon Regulations

174. The Representative of MARQUES said that the words “may request” in Rule 13 of the Lisbon Regulations seemed to suggest that the communication of modifications under the provision was optional. This was difficult to understand, as the International Register could eventually no longer be in line with reality, if modifications had occurred but had not been communicated to the International Bureau. Experience under national systems showed that modifications were very common and, depending on their nature, subject to an opposition procedure.
175. The Secretariat referred to document LI/GT/1/2, prepared by the International Bureau for the Working Group that had prepared the amendments to the Lisbon Regulations that had been adopted by the Assembly in 2001, which indicated, in paragraphs 62 to 64, that Rule 13 was meant to list exhaustively the modifications that could be recorded in the International Register. If other modifications were made, then a new registration was required. The Secretariat said that, as a result, Rule 13 had been drafted in the way it was by indicating that competent authorities could request the recording of the modifications listed in Rule 13 in the International Register. There were no provisions in the Lisbon Regulations, nor in the Lisbon Agreement for that matter, which specified

what would be the legal effect of a modification that had been made but that had not been recorded in the International Register. The Secretariat indicated that the suggestion made by the Representative of MARQUES might be explored further by the Working Group at a later stage.

Concluding Remarks

176. Offering some preliminary conclusions, the Chair said that the discussion had confirmed the understanding of the Secretariat that the prevailing view was that there did not seem to be a need for major changes to the application and registration procedures. The Chair also noted that a number of contracting countries had warned against over-complicating the procedures and that they had also drawn the Working Group's attention to the fact that the existing requirements were sufficient not only for prospective new member States but also for potential holders of appellations of origin or prospective applicants. However, further optional elements might be added to the Regulations, allowing applicants to specify additional information that could be useful for convincing competent authorities of other contracting countries. The Chair noted that there was no support for amending the current provisions on the identification of the holders of the right to use the appellation of origin. Neither had the suggestion for special provisions in the application and registration procedures in respect of appellations of origin consisting of designs or images gained particular support. The Chair suggested that the Working Group might revert, at a later stage, to the suggestion from the Delegation of the Republic of Moldova concerning Rule 8(2), the suggestion from the Delegation of Germany concerning Article 5 and the suggestion from the Representative of MARQUES concerning Rule 13. Finally, due consideration might be given to the idea of allowing producers' associations to present international applications, as suggested by the Representative of OriGIn.

Question 6: Declarations of Refusal (paragraphs 58 to 77)

177. The Chair said that there was a strong correlation between the issue of "grounds for refusal" and the issue of "grounds for invalidation", which justified taking these two issues up at the same time. Consequently, he invited delegations to intervene not only on paragraphs 58 to 77, but also on paragraph 94 of the document.
178. Following the introduction of the issues by the Secretariat, the Chair indicated that the Secretariat had highlighted as the main conclusion that could be drawn from this part of the survey that many Lisbon member States were of the view that it was not necessary to amend the current legal framework, as recently amended and streamlined. Yet, a number of suggestions had been made in the survey, such as the possible extension of the one-year period for the notification of declarations of refusal. The question was how much support there was for such an extension, and whether any such extension should apply in respect of both new registrations (under Article 5) and in respect of newly acceding countries (under Article 14(2)(c)) or only in respect of newly acceding countries. A suggestion had also been made to establish an exhaustive list of possible grounds for refusal and invalidation. The issue concerning evidence of the receipt of notifications of new international registrations would appear to have been solved as a result of the newly established Administrative Instructions. Finally, the Chair asked whether participants needed additional clarification regarding partial grants and partial refusals and also whether they would be in favor of laying down procedural requirements in the Agreement for judicial or administrative remedies in case of a refusal in a contracting country, in particular a minimum time-limit for interested parties.

*Extension of the One-Year Period for the Notification of Declarations of Refusal
(paragraphs 66-67)*

179. The Delegations of Algeria, France, Nicaragua, Peru and Portugal were of the view that the current time-limit of one year was sufficient and that there was no need to extend it.
180. The Delegation of Italy referred to Article 5(4) of the Lisbon Agreement and said that there was a need to describe the opposition procedure in more detail, because there were no other indications on how to implement such procedure. In particular, the Delegation suggested that a period of time longer than the one-year refusal period be envisaged for opposition, for example an additional period of three to six months to allow interested parties to contest the declaration of refusal or to reach an agreement. The Delegation pointed out that most declarations of refusal were sent just before the expiration of the one-year time-limit and that in such cases there was no certainty as regards the length of the opposition procedure and the date on which the right should be considered as being definitely refused. The Regulations should be amended so as to specify this.
181. As regards the proposal of the Delegation of Italy for an interim period of negotiations between States, the Delegation of France wondered whether such a negotiation period should be included in the one-year time-limit or could extend beyond it. The Delegation was of the view that the proposal should be studied in greater detail, as it might alleviate the system compared to the current situation, under which withdrawals of refusals had to be negotiated, and thus be favorable for the relations between members of the Agreement.
182. The Representative of INTA said that a practical problem existed for traders and trademark owners affected by new international registrations in having their concerns addressed within the one-year time-limit for refusal and that, from that perspective, an extension of the refusal period would indeed be a good idea, particularly in the case of newly acceding members. According to the Representative of INTA, huge efforts were required in practice and constituted a heavy burden for trademark owners, in particular, for small and medium-sized enterprises (SMEs). In practice, it was extremely difficult to make sure that prior rights were taken into account and were properly examined, mainly because there were no procedural guarantees in the Agreement itself and, in many member States, no specific procedures were in place for addressing such concerns. Consequently, it would be useful (i) to include provisions in the Agreement that would entail the submission of truly useful information; (ii) to introduce procedural guarantees through opposition and objection procedures; (iii) to include a requirement that such procedures be timely initiated because in practice, very often, the refusal notifications were sent to WIPO in the very last days of the one-year period; and (iv) to include a provision indicating that the presentation of an opposition or an objection would lead to an automatic notification of refusal, as was the case under the Madrid Protocol, so that the States concerned had sufficient time to examine the opposition request in further detail.
183. The Delegations of the Republic of Moldova and Spain said that, while the time-limit of one year was sufficient in respect of new international registrations, it would be justified to establish a longer time-limit in respect of newly acceding countries to examine the stock of appellations of origin recorded in the International Register prior to their accession. The Delegation of Spain suggested a time-limit of two years in that respect.

184. The Secretariat recalled that, upon receipt of an instrument of accession to the Agreement, as had recently been the case of the former Yugoslav Republic of Macedonia, the International Bureau notifies the existing stock of international registrations to the country concerned, which then has one year from the date on which the Agreement enters into force for it to notify refusals. As entry into force takes place three months after receipt of the instrument of accession by WIPO, in practice, newly acceding countries have a period of a little less than 15 months to issue declarations of refusal. Moreover, as all international registrations are freely accessible through the *Lisbon Express* database on the WIPO website, examination of the existing stock could already start prior to the deposit of the instrument of accession.
185. The Chair said that, in addition, Article 14 allowed acceding countries to indicate in their instrument of accession a date of accession that would be later than the end of the three month period for an accession to normally become effective.

Establishment of an Exhaustive List of Admitted Grounds for Refusal (paragraphs 68-71) and Grounds for Invalidation (paragraph 94)

186. The Delegation of France stated that the establishment of a list of grounds for refusal did not appear to be required for the time being given that there were already provisions in the Regulations, which had in particular enabled the relationship between appellations of origin and earlier trademarks to be examined.
187. The Delegations of Iran (Islamic Republic of), Nicaragua, Peru and the Republic of Moldova expressed support for the statement made by the Delegation of France.
188. The Delegation of Tunisia suggested that thought should be given to a list excluding certain grounds for refusal.
189. The Representative of CEIPI stated that in its written contribution in response to the survey undertaken by the International Bureau, CEIPI had confined itself to the question whether the time had come to draw up an exhaustive list of grounds for refusal and invalidation. The Representative said that CEIPI had responded favorably to this issue, and that its contribution was very faithfully reflected in paragraph 69 of the document. Essentially, the position of CEIPI was that the question called for a qualified response. CEIPI had suggested the establishment of an exhaustive list of the criteria on the basis of which protection could be refused or invalidated and to encourage member States to implement administrative and judicial procedures to ensure that the various interests at stake – in particular the legitimate interests of holders of prior rights – be taken into account, while leaving a certain flexibility for member States as to how to implement the criteria on which refusals or invalidations could be based, in the spirit of the corresponding provisions of the TRIPS Agreement.
190. Turning to paragraph 94, the Delegation of Portugal said that it did not support the suggested establishment of grounds for invalidation in the Agreement, which should remain the exclusive competence of national law. Moreover, Rule 16(1)(v) already required that a copy of the decision that invalidated the effects of the international registration be attached to the notification of invalidation, which enabled anybody to know what the grounds for invalidation were in any given case.
191. The Delegations of Italy and the Republic of Moldova expressed support for the statement made by the Delegation of Portugal.

192. The Secretariat, referring to the statement made by the Delegation of Portugal, said that, although a copy of the decision to invalidate the effects of an international registration had to be notified under Rule 16, such a decision would only be available in the language of the notifying country. Moreover, it would certainly serve transparency if the grounds on which the decision was based would be indicated in the notification under Rule 16.
193. The Delegation of France and the Representatives of INTA and OriGIn expressed support for the intervention from the Secretariat.
194. The Delegation of France indicated that the procedure for the notification of invalidations had been introduced relatively recently, i.e., in 2002 and that there were very few examples of its use by member States. The Delegation was of the view that not all grounds that could be invoked in order to refuse protection should be allowed as a basis for invalidation, in particular grounds relating to respect for the definition of an appellation of origin. The time limit of one year within which member States were entitled to refuse protection was sufficient to allow them to ensure that the product correctly respected the definition of an appellation of origin and that the international registration had been rightfully applied for. Consequently, the Delegation did not understand on which grounds a member State could subsequently call this into question. Indeed, thus, the time limit of one year left to administrations to analyze the validity of the appellation of origin would be meaningless and create legal uncertainty for the protection of appellations of origin. The situation was different in respect of prior rights of third parties, on which the necessary information might be lacking at the end of the one-year time-limit.
195. The Representative of INTA indicated that valid prior trademark rights should always be accepted as valid grounds for refusal, because of existing obligations to protect property rights and also in view of the provisions of the TRIPS Agreement. In that regard, she recalled that trademark law allowed for the cancellation or refusal of geographically descriptive marks but, when there were valid prior trademark rights, these had to be respected. She said that it would be helpful to have an explicit recognition thereof in the Agreement. While Rule 9 of the Lisbon Regulations explicitly stipulated that earlier trademark rights were a possible ground for refusal, without an explicit provision in the Agreement itself, there was no guarantee that all member States would accept such an earlier right as a valid ground for refusal.
196. The Secretariat indicated that there was no limitation in the Agreement as to the grounds for refusal either, which implied that any ground could be advanced, the more so since there was a clear indication along those lines in the negotiating history of the Agreement.
197. The Chairman said that, contrary to other grounds for refusal, at least, earlier rights and earlier trademark rights were explicitly mentioned in the Regulations. He could not think of a stronger recognition of the possibility of issuing declarations of refusals on that basis.

Notification Dates (paragraph 72)

198. The Representative of INTA suggested that it would be useful if notifications would be considered to have taken place at the time of publication in the official Bulletin, as that would enhance legal certainty without creating any additional administrative burdens.

Procedural Requirements for Judicial and Administrative Remedies in Contracting Countries (paragraphs 74-77)

199. The Delegation of the Republic of Moldova supported the proposal to lay down a minimum time limit for contesting refusals, as in some countries that period was too short.

Opposition Procedures?

200. The Delegation of Portugal expressed its interest in improving the mechanism of opposition by third parties, as that would enhance the attractiveness of the Lisbon system.
201. The Representative of INTA agreed that it would be useful if the Agreement established a clear and detailed opposition and/or objection procedure.
202. The Delegation of France underscored that many delegations had spoken on opposition procedures, which were absent from the Agreement, and therefore wished to inquire whether such delegations were calling for a formalized procedure to be implemented, prior to a declaration of refusal by the competent authority, or if they were requesting that the opposition procedure be handled directly by the International Bureau.
203. The Delegation of Italy referred to Article 5(4) of the Lisbon Agreement, which stated that “such declaration of refusal may not be opposed by the authorities of the country after the expiration of the period of one year.”
204. The Representative of CEIPI noted that the term “opposed” actually appeared in the original French text, but it believed that that was due to a drafting mistake, nothing more. He added that that had been confirmed by the history of that provision, given that the basic proposal which had been submitted by the International Bureau contained the following expression: “countries which in the above-mentioned period of one year had not communicated any refusal decision to the International Bureau regarding a registered appellation of origin, would lose the faculty provided in subparagraph 3 of the present article”, which matched moreover almost word for word the terminology of the Madrid Agreement. He recalled that a series of discussions had taken place at the Diplomatic Conference which had led to those provisions being drafted, and that he was of the view that there was nothing more to subparagraph 4 than a confirmation that a refusal could not be issued after a one-year period. Therefore, it was the word “opposed” which led to confusion and which might need to be replaced, given that it merely referred to an administrative refusal which had nothing to do with invalidation. The Representative of CEIPI stated that new wording for subparagraph 4 could be included in the framework of a diplomatic conference and he proposed replacing the term “opposed” by “notified”.
205. The Chair thanked the Representative of CEIPI for this clarification, which confirmed that there was no opposition procedure as such under the Lisbon Agreement, neither before nor after the expiration of the period of one year, and that paragraph 4 just reinforced that the period of one year laid down in paragraph 3 was absolute: after the expiration of the one-year period contracting countries lost their right to issue declarations of refusal.

206. The Delegation of France wondered whether the titles placed between square brackets above Article 5 of the Lisbon Agreement in WIPO publication No. 264 had any legal value and whether they had been included in the adopted text of the Agreement. This title stated “International Registration; Refusal and Opposition to Refusal; Notifications; Use Tolerated for a Fixed Period”. The indication “Opposition to Refusal” could cast doubt on the interpretation of Article 5(4).
207. The Chair said that the titles between brackets at the beginning of each article of the Agreement in WIPO publication No. 264 had only been introduced to facilitate the identification of the provisions, as indicated in footnote 1 of that publication. They did not appear in the signed original text of the Agreement.
208. With regard to Article 5(3) of the Agreement, the Delegation of Italy sought clarification of the phrase “detrimental to other forms of protection of the appellation”. How could the country concerned know what other forms of protection existed to which the refusal could be detrimental.
209. The Secretariat said that the translation into English of Article 5(3) might have been clearer, if the provision had read “such declaration will not prejudice the other forms of protection that could be”, as the provision referred back to Article 4, which stated that the protection under the Agreement was granted without prejudice to other forms of protection that might exist by virtue of other international instruments such as the Paris Convention, the Madrid Agreement for the Repression of False or Deceptive Indications or by virtue of national legislation or court decisions.

Concluding Remarks

210. On the basis of the discussions that had taken place, the Chair indicated that the main conclusion concerning Question 6 had been confirmed, namely that most contracting countries were of the view that it was not necessary to amend the current legal framework. The Chair indicated that although it seemed that there were some participants advocating the idea of establishing a list of grounds for refusal, the prevailing view was that it was not necessary. However, he added that there were some nuances, for example some delegations had suggested that the exclusion of certain grounds could perhaps be considered at least in respect of grounds for invalidation, in other words they suggested establishing a “negative” list of grounds that could not be used as a basis for refusal. There was no support for extending the one-year period for the notification of declarations of refusal in respect of new registrations either. In that regard, he pointed out that there had been some arguments in favor of extending that period for newly acceding countries, but alternatives had been suggested as well. As far as notification dates were concerned, the Chair indicated that apart from a proposal to the effect that perhaps the date of notification should be the date of publication, there were no particular suggestions for changes in that respect from contracting countries. The Chair went on to say that apart from some general statements concerning procedural requirements for judicial administrative remedies, no specific suggestion had been made in that regard, although there was a feeling that there was room for improvement of those internal procedures and that sensible time-limits should be applied. Finally, the Chair indicated that there appeared to be general agreement that Article 5(4) of the Agreement should be understood to mean that contracting countries were not allowed to issue declarations of refusal after the expiration of the one-year period, and that the text might be clarified in that regard.

Question 9: Prior Users (paragraphs 99 to 110)

211. The Chair recalled that, when the Working Group had addressed Questions 3 and 4 on the issue of scope of protection, it had been agreed to postpone discussion of the issue of the relationship between geographical indications and trademarks until Question 9 would be dealt with. Delegations were, therefore, invited to intervene on the aspects of this issue reflected in paragraphs 46 and 47 (under the heading of Questions 3 and 4) and the aspects presented in paragraphs 108 to 110 (under the heading of Question 9).
212. The Secretariat said that the purpose of Question 9 was to explore what the precise scope of Article 5(6) would be, and whether the fact that prior use could also serve as a ground for refusal under Article 5(3) would provide a sufficient safeguard in respect of a prior use that a competent authority would not want to be phased out within the period of two years stipulated in Article 5(6). The Secretariat recalled that the main conclusion that would appear to result from the survey, as reflected in paragraph 102 of the working document, was that there was a split in positions. On the one hand, a large number of contributions indicated that the Lisbon Agreement provided sufficient leeway in respect of prior use and that Article 5(6), therefore, did not have to be modified. On the other hand, however, an equally large number of contributions were calling for amendments of Article 5(6). In addition, those calling for an amendment had advanced that the provisions of Article 5(6) insufficiently took into account prior uses based on legitimate rights, in particular trademarks or other intellectual property rights. Some of these contributions, including contributions from Lisbon member States supporting the objective of Article 5(6), suggested an amendment of Article 5(6), so that it would allow for exceptions in respect of prior use based on a legitimate right. Other contributions suggested an approach which consisted in extending the time-limit of two years without modifying the basics of Article 5(6).
213. Continuing, the Secretariat said that different suggestions had been made to deal with the issue of the relationship between geographical indications/appellations of origin and trademarks. Some had expressed the view that coexistence of prior trademarks and later in time appellations of origin or geographical indications was inconsistent with Article 16 of the TRIPS Agreement. It had also been advanced that any interpretation of Article 5(6) to the effect that the provision established a phase-out period for prior trademarks would be incompatible with the TRIPS Agreement and the fundamental property right character of trademarks. Other contributions indicated that Article 5(6) should be amended so as to allow for the coexistence of prior rights and appellations of origin or geographical indications. In this regard, some had advanced that, although Article 5(3) of the Lisbon Agreement allowed competent authorities to notify a declaration of refusal, the Lisbon Agreement did not protect prior trademark rights in the event that a member State, for whatever reason, had omitted to submit such a declaration within the time-limit specified in Article 5(3). However, the Secretariat wished to draw the attention of delegations to the fact that, in such cases, tribunals in member States would have the authority to invalidate the effects of the international registration concerned for the territory of the member State in question and that, even if there was no explicit provision on that matter in the Agreement, Rule 16 of the Lisbon Regulations called for the notification of such invalidations.

The Objective of Article 5(6) (paragraphs 104 to 105); Prior Use Based on a Trademark or Other Intellectual Property Right (paragraphs 108 to 110); Relationship Between Geographical Indications and Trademarks (paragraphs 46 to 47)

214. The Representative of CEIPI was of the view that it would be timely to repeal Article 5(6) or to replace it with another, more flexible provision to allow member States better to take into account the legitimate interests of owners of trademarks. The Representative of CEIPI additionally drew attention to the political difficulties raised by Article 5(6) insofar as the provision went against a common conception currently held in some countries which were not party to the Lisbon system and which were strongly attached to priority in time as the basic principle for dealing with conflicts between appellations of origin or geographical indications on the one hand, and trademarks on the other. The Representative of CEIPI also underlined that the legal compatibility of Article 5(6) with the TRIPS Agreement, in particular its Article 17, could be seriously put in doubt.
215. The Delegation of France agreed that a very specific problem existed in respect of earlier trademarks, but wished to underline that, while the TRIPS Agreement did, indeed, define exclusive rights for trademarks, it also defined exceptions, for example, concerning the co-existence of a prior trademark and a new appellation of origin or a new geographical indication. Obviously, such exceptions, as established in the TRIPS Agreement, had to be taken into account by Lisbon member States.
216. The Delegations of Israel and Italy said that a problem had to be solved in connection with Article 5(6) and the possible coexistence between prior rights and appellations of origin or geographical indications. In their view, Article 5(6) should be amended, in view of the rights of the holder of a prior and valid trademark and the relevant provisions of the TRIPS Agreement.
217. The Representative of OriGIn agreed that an amendment of the Agreement might be envisaged allowing for the coexistence of prior rights and appellations of origin or geographical indications in appropriate cases, but only if such prior rights had been acquired in good faith.
218. The Representative of MARQUES expressed his concern about the fact that the phasing-out mechanism laid down by Article 5(6) might lead to the expropriation of trademark rights in cases when no declaration of refusal was notified by a Lisbon member State within the refusal period. He was of the view that the resulting obligation to terminate the use of a prior trademark without any form of compensation was not acceptable, as it represented an unjustified loss of the investments made by trademark owners. He added that it was also in contradiction with the provision of Article 24.5 of the TRIPS Agreement which allowed geographical indications to coexist with trademarks, either when these were registered or included in pending applications, or had been acquired in good faith through use, before the date of application of the TRIPS Agreement in the member State concerned, or before the geographical indication was protected in its country of origin. The Representative of MARQUES believed that an amendment of Article 5(6) of the Lisbon Agreement that would take into account the TRIPS provisions and the legitimate interests of trademark owners would be a positive step for the future development of the Lisbon system.
219. The Representatives of ECTA and INTA stressed the importance of ensuring the compatibility of the Lisbon Agreement with the TRIPS Agreement and the obligations of member States to protect property rights. The Representative of INTA said that INTA's position was based on the general principle "first in time, first in right". As

exclusivity was also one of the core functions of trademarks, INTA could not accept that conflicting geographical indications and trademarks should always coexist. In that regard, the Representative of INTA recalled that the WTO panel in the case that the United States of America and Australia had initiated a few years ago against the European Communities had, in addition to other limitations, only upheld the specific coexistence regime of Article 14(2) of EC Regulation 2081/92 (the predecessor of EC Regulation 510/2006) because the provision in question would only be applicable in a relatively limited number of cases.

Extension of the Period of Two Years Under Article 5(6)

220. The Delegation of France recalled that in its response to the survey it had expressed its wish to maintain the current state of Article 5(6) with possible amendments, in particular as regards the time limit of the period of tolerated use, given that a period of two years was actually sometimes too short to be able to organize a new communication concerning a product. Nevertheless, such a measure should not have harmful consequences or be the cause of economic prejudice which was too significant. The aim of the provision should remain to provide a transitional period to third parties, who used the appellation already before its protection as an appellation of origin, in order to terminate such use. It also recalled that those provisions were relatively frequently used, whether in bilateral agreements or even within the EU, and were therefore quite viable. There were old examples of illicit use of appellations of origin, for instance, France's use of the appellation "Tokay". France had found the way to stop such illegitimate use, albeit not within a period of two years. A longer period should be allowed, for example five to 10 years.
221. The Delegation of Chile said that Article 5(6) of the Agreement was a significant obstacle. The Delegation was of the view that the time-limit of two years was very short. Moreover, the provision could leave owners of previously registered or recognized trademarks or geographical indications in other member States defenseless.

Concluding Remarks

222. The Chair said that there was, indeed, a split on the issue, even though the divide was probably not that deep. He suggested, therefore, that Article 5(6) remain on the list of issues to be dealt with in the process ahead of the Working Group. He wished to add that, in his view, there was enough room for applying Article 5(6) in a way that was compatible with the TRIPS Agreement. A Lisbon member State giving effect to the provisions of Article 24(5) of the TRIPS Agreement could simply refrain from invoking Article 5(6) of the Lisbon Agreement.

Question 7: Generic Appellations (paragraphs 78 to 86)

223. The Secretariat recalled that Question 7 had been taken up in the questionnaire to explore whether the provisions of the Lisbon Agreement dealt satisfactorily with the issue of generic appellations and, more specifically, Question 7 called for feedback as to whether Article 6 of the Agreement, as it read, allowed for exceptions, and if not, whether it should be amended. A large number of contributions had expressed the view that Article 6 should not be amended, as any exception to the rule laid down by Article 6 would undermine the international protection of appellations of origin. A number of other

contributions, however, had expressed the view that there was no need to amend the Article because it was flexible enough and provided sufficient leeway. There were also contributions that indicated that Article 6 was satisfactory and should not be amended, without, however, expressing a view on whether the provision allowed for exceptions. Some contributions had suggested that Article 6 be amended so as to explicitly allow for exceptions based on the use by third parties prior to the international registration of the appellation of origin. Finally, one non-Lisbon State had indicated that Article 6 should be deleted, as it was, and should be, the right holder's responsibility to monitor the use of the right in such a way that unauthorized use did not result in the term becoming generic.

224. The Delegation of France began with a formal observation regarding the title which had been mentioned in the Agreement and which was found in WIPO publication No. 264. It underscored that Article 6 had the title "Generic Appellations" whereas, as a matter of fact, in the body of the text, it dealt with cases in which the appellation was not generic. Otherwise, as for the body of the text, the Delegation was of the view that it was necessary to leave it unchanged and that there was no need to make any amendments. Furthermore, the Delegation noted that some of the issues raised by other delegations were dealt with either in the context of an invalidation procedure, or in the context of the refusal procedure.
225. The Delegation of Romania stated that it shared the view expressed by the Delegation of France. With respect to the text of Article 6, it was of the view that there was no need to change the content of that Article.
226. The Chair indicated that the general opinion seemed to be that there was no need to change Article 6, be it that different reasons had been advanced to substantiate such opinion.

Question 8: Invalidation (paragraphs 87 to 98)

227. The Chair recalled that the issue of "grounds for invalidation" had already been dealt with in the discussion on Question 6, together with the issue of "grounds for refusal".
228. The Secretariat indicated that Question 8 had been added to the survey in order to explore whether the procedures for the notification of invalidations under Rule 16 were functioning satisfactorily. These procedures had been introduced into the Lisbon Regulations only in 2002 and since then only a few invalidations had been recorded, as reflected in paragraph 89 of the working document. A large number of contributions indicated that no particular amendments to Rule 16 were necessary. Some contributions, nevertheless, indicated that certain modifications might be useful, as reflected under the headings "Scope and Legal Basis", "Notification Requirements and Rules" and "Rules and Procedures at the Domestic Level".

Scope and Legal Basis (paragraph 93)

229. The Secretariat indicated that a number of contributions had expressed concern about the precise scope of Rule 16 and, in particular, the legal basis for that provision in the Lisbon Agreement.

230. The Delegation of France wondered what the possible benefit would be of inserting the provision of Article 16 into the Agreement itself. As to the suggestion that invalidation should only be pronounced in the country of origin, the Delegation was of the view that where an appellation of origin would no longer be protected in the country of origin, equally, its protection under the Lisbon system should stop.
231. Some discussion followed on the difference between Rule 16 concerning invalidations and Rule 15 concerning cancellations. The question was raised whether Rule 15 should not rather have a mandatory character (comparable to the mandatory character of Rule 22 of the Common Regulations under the Madrid Agreement and Protocol).
232. The Representative of OriGIn was of the view that, for the sake of legal certainty, it was important to stipulate the issue of invalidation in the Agreement itself.
233. The Delegation of the Republic of Moldova did not agree with the suggestion that the grounds for invalidation had to be limited to the infringement of third party rights.
234. The Delegation of Italy expressed the view that, where the issue of invalidation was not dealt with in the Lisbon Agreement, the issue remained entirely within the realm of national law. Rule 16 only provided that, whenever the effects of an international registration were invalidated by a tribunal or at the end of an administrative procedure, such invalidation had to be notified to WIPO for purposes of its recording in the International Register and its transmittal to the country of origin.

Notification Requirements

235. The Secretariat said that some contributions had indicated that more information than the one currently required under Rule 16 should be provided in notifications of invalidations. In that regard, the Secretariat recalled that, in the discussion on “Grounds for Invalidation” that had taken place under Question 6, several Delegations had indicated that it might be useful to add a requirement that notifications of invalidation had to specify the grounds for invalidation that the tribunal in question had invoked for its decision. Some contributions had questioned the limitation of the notification obligation under Rule 16 to invalidations that were no longer subject to appeal. It had been suggested that the International Bureau should be notified under Rule 16(1) whenever proceedings for invalidation had been initiated.
236. Turning to the issue raised concerning the definition of the terms “competent authority” in the chapeau of Rule 16(1) and “elements” in Rule 16(1)(iv), the Secretariat referred to Rule 4 of the Lisbon Regulations, which requires that each Lisbon country indicates at the time of its accession the name and address of its competent authority for purposes of communicating with the International Bureau under the procedures of the Lisbon system. The term “competent authority” under Rule 16 was simply an application of Rule 4 of the Lisbon Regulations. As regards the term “elements” in Rule 16(1)(iv), the Secretariat referred to the parallel provision of Rule 9 of the Lisbon Regulations concerning declarations of refusal, which under Rule 9(2)(iv) contained the same phrase.
237. The representative of OriGIn said that notifications of invalidations should only remain required for those invalidations that were no longer subject to appeal.

Rules and Procedures at the Domestic Level (paragraph 98)

238. The Secretariat said that a suggestion had been made to introduce a requirement in the Agreement for member States to establish “appropriate rules and procedures in their domestic law allowing for invalidation of the effects of an international registration in their territory.” In that regard, the Secretariat drew attention to a concern that had already been expressed for many the years, namely the difficulty to find out what the procedures for refusing or invalidating the effects of Lisbon registrations actually were in Lisbon member States. For example, there was uncertainty as to who was entitled to file complaints, or as to which was the competent government authority to decide on complaints, or which tribunal was competent to deal with them. This was an important issue for those who had been affected by international registrations of appellations of origin and were trying to defend their rights in the Lisbon member States.
239. The Delegation of France said that there were different types of procedure in France, it could easily be appreciated that there were huge areas of intervention which came under the general regulations of States’ judicial procedures.

Concluding Remarks

240. The Chair said that he had sensed some support for the idea that grounds for invalidation should become part of notifications of invalidation, but views differed on whether only those notifications that were no longer subject to appeal should be issued, or whether notifications should also be issued whenever proceedings had been initiated. Due note was taken of the Secretariat’s comment on the need to establish appropriate tools and procedures in member States’ domestic law concerning invalidation. He had heard no delegation advocating the idea for those rules and procedures to be addressed in the Agreement itself. As explained by the Delegation of France, it would not really make sense for the Lisbon Agreement to require that invalidation could only take place in the country of origin. However, the question might need to be addressed by the Working Group whether Rule 15 of the Lisbon Regulations should be transformed into a mandatory provision.
241. Referring to the Chair’s conclusion concerning rules and procedures at the domestic level, the Secretariat suggested that Lisbon member States might be asked to publicize the available procedures on their competent authority’s website, for the purpose of allowing the public at large to get acquainted with them.
242. The Chair said that the Working Group might, indeed, consider the usefulness of some transparency measures whereby member States would be invited to publish the relevant rules and procedures in an accessible manner so that interested parties could get acquainted with those rules.

Question 10: Other Issues

243. The Chair said that paragraphs 111 to 127 listed 10 items and requested feedback from delegations on the issues concerned.
244. The Secretariat said that some of these issues were related to topics discussed by the Working Group under Questions 1 to 9 or to Agenda Item 5. For example, the issue reflected in paragraph 113 was addressed in document LI/WG/DEV/2/3, which would be

discussed under Agenda Item 5. The issue reflected in paragraph 114 had been touched upon in the discussions under Questions 6 and 9. The issue reflected in paragraph 123 had come up in the discussion under Question 5. The same applied, to some extent, in respect of the issue reflected in paragraph 120. As regards the issue concerning the Lisbon pages on the WIPO website in paragraph 125, the Secretariat referred to the introductory statement by the Director General at the beginning of the present session of the Working Group.

245. The Representative of CEIPI recalled that in order to strengthen the attractiveness of the Lisbon system for developing countries, a legal framework should be proposed which took full account of the interests of such countries. In that respect, he stressed that it would be timely to reflect on increasing the value of traditional knowledge within the framework of the Lisbon system, and in particular the interest of geographical indications to promote traditional knowledge. The Representative of CEIPI stated that that issue was also under discussion in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.
246. The Secretariat said that, if the suggestion was that products of traditional knowledge should be registrable under the Lisbon Agreement, it should be noted that such registration was already possible, given the fact that the Lisbon Agreement did not exclude any category of products.
247. The Chair said that he was under the impression that, although the issues raised under Question 10 deserved attention, the Working Group was of the view that its primary focus should, for the time being, be on the issues addressed under Questions 1 to 9.
248. The Delegation of France was of the view that it was unnecessary to dismiss completely the points raised under Question 10 but, on the contrary, they should be studied insofar as they would be useful in defining a solution to the first nine questions which had been discussed. Of particular importance for inclusion among such points should be that concerning dispute resolution raised in paragraphs 115 to 118.
249. The Delegations of Italy and Portugal agreed that the issue of dispute settlement, as reflected in paragraphs 115 to 118, deserved further study.
250. The Delegation of Israel and the Representative of INTA expressed some words of caution, depending on what kind of dispute settlement mechanism would be envisaged and what kind of disputes could be subject to it.
251. The Chair concluded that there appeared to be support for the Working Group to take up the issue of dispute settlement at a future session. He suggested that the Working Group might invite the Secretariat to prepare a study on the possibility of dispute settlement within the Lisbon system, aimed to allow the Working Group to explore in which situations dispute settlement might be appropriate and in what form. The study might also include information on the existing dispute settlement systems in the intellectual property area and the legislative history in that regard.
252. The Working Group so agreed.

AGENDA ITEM 7: ADOPTION OF THE SUMMARY BY THE CHAIR

253. The Chair said that a draft for the Summary by the Chair was contained in document LI/WG/DEV/2/4 Prov. As pointed out under item 41 of that document, a draft of the full report of the session of the Working Group would be distributed for comments among the delegations and representatives that had participated. Any such comments could be submitted within two months from the distribution date of that draft report, after which the draft report would be amended, as required, and made available to delegations on the WIPO website, for its formal adoption in due course.
254. Following several interventions regarding paragraphs 14, 15 and 16 of document LI/WG/DEV/2/4 Prov., the Chair suggested as follows: (i) paragraph 14 would remain as it was, with the exception of the word “general”, which would be replaced by the word “wide”; (ii) the first sentence of paragraph 15 would stay as it was but a new sentence would be added to the paragraph, reading “The Chair added that it would have to be examined on an individual basis whether and how the intergovernmental organizations concerned would meet those criteria”; and (iii) paragraph 16 would remain unchanged.
255. Following a number of interventions regarding paragraph 17 of the document, the Chair proposed a revised draft, reading as follows: “The Chair concluded that the Working Group had agreed that, in accordance with paragraphs 14 to 16, above, the draft provisions referred to in paragraph 38, below, should also deal with the possible accession by competent intergovernmental organizations.”
256. The Representative of INTA said that he appreciated that the Summary by the Chair did not necessarily reflect all the nuances and opinions that had been expressed, but was of the view that paragraphs 20 to 23 did not capture one important point that had been put forward by a number of participants in the meeting, namely that a duality of definitions might need to be paralleled by differences in scope of protection. He suggested that, for that reason, the Chair might wish to add a sentence at the end of paragraph 20 that would read: “he also noted that for some participants two separate definitions would imply different scopes of protection.”
257. The Chair agreed that the proposed text would be an improvement, reflecting more correctly what had been discussed.
258. Regarding paragraph 21 of the document, the Delegation of Iran (Islamic Republic of) was of the view that the text should not prejudge the result of negotiations on the definitions issue and said that his Delegation would prefer to retain the notion of “reputation” in the “appellation of origin” definition.
259. The Chair said that the point that was made in paragraph 21 was that there would be no need to change Article 2(2) of the Lisbon Agreement and that the notion of “reputation” was mentioned in Article 2(2) of the Lisbon Agreement.
260. The Representative of CEIPI said that the current text gave the impression that “reputation” was part of the definition of appellation of origin in Article 2(1), which was not quite true; it was only included in the definition of country of origin in Article 2(2).
261. The Chair suggested, therefore, a modification of the second part of paragraph 21, so that it would read: “there would be no need to change the way in which Article 2 of the Lisbon Agreement referred to reputation.”

262. Following a suggestion by the Representative of CEIPI regarding paragraph 22 of the document, the Chair agreed that the text should focus on the fact that there was no opposition against extending the protection conferred by the Lisbon Agreement to traditional non-geographical denominations. Consequently, the words “geographical and” could be deleted from the draft.
263. With respect to paragraph 23 of the document, the Delegation of Iran (Islamic Republic of) believed that, under international public law, intergovernmental organizations could not have a territory, but only its member States, and suggested, therefore, to insert the words “one or more member States” after “originating in the territory of” in the third line.
264. The Representative of the EU expressed his disagreement and suggested, instead, “in the territory of such an organization or of its member States.”
265. The Chair said that, in his understanding, EU legislation applied throughout the entire EU and did not make a distinction between the territory of its member States and the territory of the EU. In addition, the Chair recalled that the Madrid Protocol and the Geneva Act also had provisions referring to the territory of intergovernmental organizations. In conclusion, he suggested the following wording: “The Chair noted that there was support for a definition of ‘country of origin’ which is not limited to ‘countries’, but also allows for international registrations by intergovernmental organizations.”
266. Regarding paragraph 26 of the document, the Representative of OriGIn said that OriGIn would like the Summary by the Chair to reflect its suggestion, made in response to Question 10, that producers’ associations should be entitled to apply for an international registration under the Lisbon system.
267. The Chair said that, although that suggestion had met some support, it was not the prevailing view. Moreover, the suggestion would require a major overhaul of the Lisbon system. In any event, the current text stated that “the suggestions made under Question 10 might be taken up at a later stage” and the comments made by the Representative of OriGIn would be fully reflected in the final Report of the second session of the Working Group.
268. With respect to paragraph 32 of the French version of the document, the ECOWAS wondered whether the expressions “*une raison différente*” and “*diverses raisons*” had the same connotation, and if so, it suggested a preference for using “*diverses raisons*” since many reasons had been given. It also proposed replacing “*il n’était pas nécessaire*” by “*ne s’avérait pas nécessaire*”.
269. The Delegation of France did not agree with the first proposal to replace “*une raison différente*” by “*diverses raisons*”, since that amendment changed the meaning of the sentence. Indeed, the expression “*une raison différente*” meant that the reasons given by various delegations conflicted, whereas the expression “*diverses raisons*” referred rather to the number of reasons given. Therefore, the Delegation of France was of the view that the initial wording should be retained.
270. The Chair said that the views that had been expressed on that issue were indeed conflicting ones.

271. Regarding paragraph 36 of the document, the Representative of INTA had some difficulty in understanding the second sentence. He more specifically referred to the phrase “issues to be dealt with”, which was vague and did not specify when such issues would be dealt with or in which context. He recalled that, during the discussions, there had been a wide split on the issue and suggested replacing the words “should be among the issues to be dealt with” by “was an issue to be further reflected upon”.
272. In response, the Chair referred to paragraph 38 of the document, which stated that draft provisions to be prepared by the Secretariat should contain alternative versions. This also applied to the issues to be dealt with under Question 9. Following a suggestion made by the Representative of INTA, the Chair suggested to add the following phrase in the third line of paragraph 38: “taking into account all comments made in the current session”.
273. The Representative of ECOWAS stated that there seemed to be an inconsistency in paragraph 35. Also, he suggested that paragraph 37 served as a transition to paragraph 38, as paragraph 38(2) stated that the “International Bureau prepare for its next session”; in such circumstances, the Representative of ECOWAS wished that paragraph 37 would state that “the Chair concluded that the proposals set out in the context of paragraph 10 might be examined at the next session of the International Bureau”.
274. The Chair said that the document was not meant to establish the Agenda for the next session of the Working Group. He recalled that not all issues discussed were at the same degree of maturity. Those addressed under Question 10 could be taken up at a later stage, either at the next session or at any further session. Paragraph 38 was clear in that respect, as it only referred back to questions 1 to 9.
275. The Delegation of Iran (Islamic Republic of) recalled that in the course of the discussions on paragraph 17, the Chair had suggested to make reference to the core objectives and principles of the Lisbon system at the end of paragraph 38.
276. The Chair indicated that the end of the sentence would then read: “while preserving the principles and objectives of the Lisbon Agreement.”
277. The Working Group took note of the statements made and adopted the revised draft of the Summary by the Chair, as reproduced in Annex I to the present document.

AGENDA ITEM 8: CLOSING OF THE SESSION

278. The Chair closed the session on September 3, 2010.

[Annexes follow]



LI/WG/DEV/2/4
ORIGINAL: ENGLISH
DATE: SEPTEMBER 3, 2010

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

Second Session

Geneva, August 30 to September 3, 2010

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 August 30 to September 3, 2010.
2. The following Contracting Parties of the Lisbon Union were represented at the session: Algeria, Burkina Faso, Congo, Costa Rica, Cuba, Democratic People’s Republic of Korea, France, Georgia, Hungary, Iran (Islamic Republic of), Israel, Italy, Mexico, Nicaragua, Peru, Portugal, Republic of Moldova, The former Yugoslav Republic of Macedonia*, Tunisia (19).
3. The following States were represented as observers: Belgium, Chile, Germany, Iraq, Morocco, Romania, Slovenia, Spain, Switzerland, Thailand, Turkey, Ukraine, United States of America, Zimbabwe (14).

* On July 6, 2010, the Government of the former Yugoslav Republic of Macedonia deposited its instrument of accession to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. The Lisbon Agreement will enter into force with respect to the former Yugoslav Republic of Macedonia on October 6, 2010.

4. Representatives of the following international intergovernmental organizations took part in the session in an observer capacity: Economic Community of West African States (ECOWAS), European Union (EU), Food and Agriculture Organization of the United Nations (FAO), International Olive Oil Council (IOOC), World Trade Organization (WTO) (5).
5. Representatives of the following international non-governmental organizations took part in the session in an observer capacity: Brazilian Intellectual Property Association (ABPI), Centre for International Intellectual Property Studies (CEIPI), European Communities Trade Mark Association (ECTA), 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/2/INF/1 Prov. 2.

Agenda Item 1: Opening of the Session

7. Mr. Francis Gurry, Director General, opened the session, recalled the mandate of the Working Group and introduced the draft agenda, as contained in document LI/WG/DEV/2/1 Prov. 2.

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, Mrs. Patricia Victoria Gamboa Vilela (Peru) and Mr. Howard Poliner (Israel) were 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/2/1 Prov. 2) without modification. It was nonetheless agreed that item 6 of the agenda (Results of the Survey on the Lisbon System) would be discussed before item 5 (Study on the Relationship Between Regional Systems for the Protection of Geographical Indications and the Lisbon System and the Conditions for, and Possibility of, Future Accession to the Lisbon Agreement by Competent Intergovernmental Organizations).

Agenda Item 4: Adoption of the Report of the First Session of the Working Group

11. The Working Group adopted the Revised Draft Report of the First Session of the Working Group (document LI/WG/DEV/1/4 Prov. 2) without modification.

Agenda Item 5: Study on the Relationship Between Regional Systems for the Protection of Geographical Indications and the Lisbon System and the Conditions for, and Possibility of, Future Accession to the Lisbon Agreement by Competent Intergovernmental Organizations

12. Discussions were based on document LI/WG/DEV/2/3.
13. The Chair concluded that the Working Group was of the view that Part A of the document provided a correct analysis of the current application of the Lisbon system within the regional systems concerned.
14. As far as part B was concerned, although there were still a number of issues to be clarified, the Chair observed that there was wide support for opening up the Lisbon system to the accession of competent intergovernmental organizations.
15. The Chair concluded that the criteria identified by the study to determine whether a given intergovernmental organization was in a position to accede to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (hereinafter referred to as the “Lisbon Agreement”) were appropriate, relevant and acceptable to the Working Group. The Chair added that it will have to be examined on an individual basis whether and how the intergovernmental organization concerned meets these criteria.
16. The Chair also noted that internal issues surrounding the possible accession by an intergovernmental organization would have to be dealt with by the intergovernmental organization itself.
17. The Chair concluded that the Working Group had agreed that, in accordance with paragraphs 14 to 16, above, the draft provisions referred to in paragraph 38, below, should also deal with the possible accession by competent intergovernmental organizations.

Agenda Item 6: Results of the Survey on the Lisbon System

18. Discussions were based on document LI/WG/DEV/2/2. In these discussions, in particular, the following observations were made:

Question 1: The Basis for Protection in the Country of Origin (paragraphs 1 to 9)

19. The Chair observed that, while Contracting Parties were of the view that it can be inferred from the current legal framework that Article 1(2) of the Lisbon Agreement and Rule 5(2)(a)(vi) of its Regulations allow for flexibility, as long as the requirements of Articles 2 and 3 of the Agreement are met, observers would rather prefer such flexibility to be formalized, for example by deletion of the words “as such” from Article 1(2).

Question 2: Terminology and Definitions (paragraphs 10 to 27)

20. The Chair noted that most delegations were in favor of a system in which there would be two separate definitions, one on appellations of origin along the lines of Article 2 of the Lisbon Agreement and the other on geographical indications along the lines of Article 22.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). He also noted that, for some participants, two separate definitions would imply differences in the scope of protection.
21. The Chair also observed that with two separate definitions, for appellations of origin and geographical indications, there would be no need to change the way in which Article 2 of the Lisbon Agreement refers to "reputation".
22. The Chair observed that no opposition was expressed against extending the protection conferred by the Lisbon Agreement to traditional non-geographical denominations.
23. The Chair noted that there was support for a definition of "country of origin" which is not limited to "countries", but also allows for international registrations by intergovernmental organizations. There was also support for the introduction of an option concerning joint international registrations by two or more countries which share the territory of the production area.

Question 3 and 4: Scope of Protection (paragraphs 28 to 47)

24. The Chair concluded that a number of Contracting Parties were of the view that the expression "usurpation or imitation" in Article 3 of the Lisbon Agreement was clear enough, but noted that other delegations had requested further clarification and modernization of those terms.
25. The Chair also noted that there was growing support in the Working Group for an extension of the protection to products that were not of the same kind, but that diverse opinions had been expressed concerning the criteria that could be used in that regard.

Question 5: Application and Registration Procedures (paragraphs 48 to 57)

26. The Chair concluded that the prevailing view was that the application and registration procedures did not require any particular improvement.
27. The Chair concluded that the Working Group seemed almost unanimously opposed to the idea of adding additional mandatory requirements for international applications, but noted the suggestion that optional elements might be added instead (for example those that would help ascertain whether definition requirements were met, or whether the link between the product and a precise geographical area had been established).
28. The Chair also noted that the idea to allow for the registration of designs or images as appellations of origin did not gain particular support.

Question 6: Declarations of Refusal (paragraphs 58 to 77)

29. The Chair concluded that many Contracting Parties were of the view that an amendment of the current legal framework was not necessary.
30. The Chair noted that the time limit under Article 5(3) of the Lisbon Agreement needed not be extended in respect of new international registrations, but that there might be a need to establish a longer time limit under Article 14(2)(c) for newly acceding countries, although Article 14(5)(b) may already provide sufficient flexibility in that regard.
31. As far as the admitted grounds for refusal were concerned, the Chair observed that important guarantees were already given to prior rights under the Lisbon Regulations given the fact that, contrary to other grounds for refusal, earlier rights and earlier trademark rights were explicitly mentioned in Rule 9(2)(iii) of the Lisbon Regulations.

Question 7: Generic Appellations (paragraphs 78 to 86)

32. 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.

Question 8: Invalidation (paragraphs 87 to 98)

33. The Chair noted the fact that some delegations were of the view that no particular amendment to Rule 16 under the Lisbon Regulations seemed necessary, while others were, on the contrary, calling for certain refinements in the text.
34. The Chair concluded that there was support for the proposal that the grounds for invalidation should be indicated in notifications of invalidation.
35. The Chair also noted that most delegations did not believe that the rules and procedures allowing for invalidation of the effects of an international registration at the national level had to be dealt with in the Agreement itself and took the view that the rules and procedures in question had to be dealt with at the domestic level.

Question 9: Prior Users (paragraphs 99 to 110)

36. The Chair noted that there was a clear split on this issue, even though the divide might not be so deep. In consequence, the Chair indicated that Article 5(6) should be among the issues to be dealt with.

Question 10: Other Issues (paragraphs 111 to 127)

37. The Chair concluded that the suggestions made under Question 10 might be taken up at a later stage.

Further Work

38. The Chair concluded that the Working Group had agreed that, for its next session, the International Bureau prepare draft provisions on the various topics addressed under Questions 1 to 9, taking into account all comments made in the current session, in order for the work on the development of the Lisbon system to become more focused. These draft provisions should contain alternative versions and leave open the question as to the legal instrument by which they might be formalized, while preserving the principles and objectives of the Lisbon Agreement.
39. The Chair also concluded that the Working Group had agreed to invite the Secretariat to prepare a study on the possibility of dispute settlement within the Lisbon system, as it might be useful to explore in which situations dispute settlement might be appropriate and in what form. He further indicated that the study could also include information on the existing dispute settlement systems in the intellectual property area and the legislative history in that regard.

Agenda Item 7: Summary by the Chair

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

Agenda Item 8: Closing of the Session

42. The Chair closed the session on September 3, 2010.

[Annex II follows]



LI/WG/DEV/2/INF/1 PROV. 2
ORIGINAL: FRANÇAIS/ENGLISH
DATE: 3 SEPTEMBRE 2010 / SEPTEMBER 3, 2010

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

**Deuxième session
Genève, 30 août – 3 septembre 2010**

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

**Second Session
Geneva, August 30 to September 3, 2010**

Liste des participants
List of Participants

établie par le Secrétariat
prepared by the Secretariat

I. MEMBRES/MEMBERS

(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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BURKINA FASO

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

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

* Le 6 juillet 2010, le Gouvernement de l'ex-République yougoslave de Macédoine a déposé auprès du Directeur général de l'Organisation Mondiale de la Propriété Intellectuelle (OMPI) son instrument d'adhésion à l'Arrangement de Lisbonne concernant la protection des appellations d'origine et leur enregistrement international. L'Arrangement de Lisbonne entrera en vigueur à l'égard de l'ex-République yougoslave de Macédoine le 6 octobre 2010.

* On July 6, 2010, the Government of the former Yugoslav Republic of Macedonia deposited its instrument of accession to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. The Lisbon Agreement will enter into force with respect to the former Yugoslav Republic of Macedonia on October 6, 2010.

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III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/
INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

COMMUNAUTÉ ÉCONOMIQUE DES ÉTATS DE L'AFRIQUE DE L'OUEST
(CEDEAO)/ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

Bodo Daniel LAGO, conseiller juridique principal au Département des affaires juridiques, Lagos

CONSEIL OLÉICOLE INTERNATIONAL (COI)/INTERNATIONAL OLIVE OIL COUNCIL (IOOC)

Jean-Louis BARJOL, Director Adjunto, Jefe de las Divisiones Estudios-Evaluación y Administrativa-Financiera, Madrid

ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE (FAO)/
FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

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

UNION EUROPÉENNE/EUROPEAN UNION

Zuzana SLOVAKOVA (Mrs.), Legal and Policy Officer, Industrial Property, Directorate-General
for the Internal Market and Services, European Commission, Brussels

Sergio BALIBREA, First Counsellor, Permanent Delegation, Geneva

Tomas BAERT, Second Secretary, Permanent Delegation, Geneva

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

Association brésilienne de la propriété intellectuelle (ABPI)/Brazilian Intellectual Property
Association (ABPI)

Ana Lúcia BORDA (Mrs.), Rio de Janeiro

Association communautaire du droit des marques (ECTA)/European Communities Trade Mark
Association (ECTA)

Florent GEVERS, Chair, ECTA Geographical Indications Committee, Diegem

Jan WREDE, Vice Chair, ECTA Geographical Indications Committee, Rome

Association des propriétaires européens de marques de commerce (MARQUES)/Association of
European Trademark Owners (MARQUES)

Miguel Ángel MEDINA, Chair, MARQUES Geographical Indications Team, Madrid

Keri JOHNSTON (Ms.), Vice Chair, MARQUES Geographical Indications Team, Toronto

Sébastien VITALI, Member, MARQUES Geographical Indications Team, Vevey

Centre d'études internationales de la propriété intellectuelle (CEIPI)/Centre for International
Intellectual Property Studies (CEIPI)

François CURCHOD, chargé de mission, Genolier

International Trademark Association (INTA)

Constanze SCHULTE (Mrs.), Member, INTA Geographical Indications Subcommittee, Madrid

Bruno MACHADO, Geneva Representative, Rolle

Organisation pour un réseau international des indications géographiques (oriGIn)/Organization
for an International Geographical Indications Network (oriGIn)

Massimo VITTORI, Secretary General, Versoix

Ida PUZONE (Ms.), Project Manager, Versoix

V. BUREAU/OFFICERS

Président/Chair: Mihály FICSOR (Hongrie/Hungary)

Vice-présidents/Vice-chairs: Howard POLINER (Israël/Israel)

Patricia Victoria GAMBOA VILELA (Srta.) (Pérou/Peru)

Secrétaire/Secretary: Matthijs GEUZE (OMPI/WIPO)

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

Francis GURRY, directeur général/Director General

Binying WANG (Mme/Mrs.), vice-directrice générale/Deputy Director General

Matthijs GEUZE, chef du Service d'enregistrement international des appellations d'origine, Service d'enregistrement international de Madrid et de Lisbonne, Secteur des marques et des dessins et modèles/Head, International Appellations of Origin Registry, International Registries of Madrid and Lisbon, Brands and Designs Sector

Florence ROJAL (Mlle/Miss), juriste, Service d'enregistrement international des appellations d'origine, Service d'enregistrement international de Madrid et de Lisbonne, Secteur des marques et des dessins et modèles/Legal Officer, International Appellations of Origin Registry, International Registries of Madrid and Lisbon, Brands and Designs Sector

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