

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

### **Third Session**

**Geneva, May 23 to May 27, 2011**

### **DRAFT PROVISIONS ON CERTAIN MATTERS ADDRESSED BY THE WORKING GROUP IN THE CONTEXT OF THE REVIEW OF THE LISBON SYSTEM**

*Document prepared by the Secretariat*

1. At its second session, which took place in Geneva from August 30 to September 3, 2010, the Working Group on the Development of the Lisbon System (Appellations of Origin) (hereinafter referred to as “the Working Group”) requested the International Bureau of the World Intellectual Property Organization (WIPO) to prepare, for its next session, draft provisions on the various topics addressed under Questions 1 to 9 of the working document LI/WG/DEV/2/2, taking into account all comments made during the second session of the Working Group.
2. As indicated in paragraph 38 of the Summary by the Chair (document LI/WG/DEV/2/4), adopted by the Working Group at the conclusion of its second session, an in-depth discussion of concrete proposals (draft provisions) might allow the work on the development of the Lisbon system to become more focused as regards making the system more attractive for users and prospective new members of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (hereinafter referred to as “the Lisbon Agreement”), while preserving the principles and objectives of the Lisbon Agreement. The International Bureau was requested to prepare such draft provisions, which should leave open the question as to the legal instrument by which they might be formalized.
3. As a result, the International Bureau has prepared the present document, which contains two Annexes outlining such draft provisions.

4. Annex I presents proposals for amendment of the Regulations under the Lisbon Agreement (hereinafter referred to as the "Lisbon Regulations"), which the Working Group, in view of its discussions of the topics concerned during its second session, might already be willing to submit to the Assembly of the Lisbon Union for adoption at its upcoming session in September 2011. The draft provisions in question concern proposed amendments of Rule 5(3) of the Lisbon Regulations (Optional Contents of the International Application) and Rule 16(1) of the Lisbon Regulations (Notification of Invalidation to the International Bureau).
5. Annex II presents draft provisions concerning topics discussed at the second session of the Working Group, in respect of which the Working Group might wish to recommend to the Assembly of the Lisbon Union to give directions to the International Bureau concerning the preparation of a process that might result in amendments or a revision of the Lisbon Agreement and/or the conclusion of a protocol or a new treaty supplementing the Lisbon Agreement. The draft provisions in question concern the following issues: (i) basis for protection and definitions, (ii) filing of international applications, (iii) accession criteria for international intergovernmental organizations, (iv) international registration, (v) scope of protection, (vi) prior use and (vii) procedures in Contracting Parties prior to the issuance of possible refusals and for challenging refusals issued.
6. Where the discussions at the second session of the Working Group had generated diverging views on some of the topics addressed, the Working Group has requested the International Bureau to present alternative versions of the draft provisions. Alternatives are shown, in Annex II, either in the form of different options for a particular provision or through the use of square brackets.
7. Other topics discussed at the second session of the Working Group might be taken up at a later stage, as indicated in the Draft Report of that session (document LI/WG/DEV/2/5 Prov.).

8. *The Working Group is invited to:*

(i) *take note of the present document;*

(ii) *indicate whether it would recommend that proposals to amend Rule 5(3) and Rule 16(1) of the Lisbon Regulations, as contained in Annex I, be submitted to the Assembly of the Lisbon Union for adoption;*

(iii) *indicate its recommendations with regard to the proposed draft provisions contained in Annex II, both in terms of content and as to the possible initiation of a process as referred to in paragraph 5, above; and*

(iv) *decide on any follow-up action that the Working Group may deem appropriate.*

[Annexes follow]

## PROPOSED AMENDMENTS TO THE LISBON REGULATIONS

### A. Proposed Amendment to Rule 5(3) Concerning Optional Contents of the International Application

1. As reflected in paragraph 27 of the Summary by the Chair (document LI/WG/DEV/2/4), as adopted by the Working Group at its second session, Rule 5(3) of the Lisbon Regulations might be amended by the addition of further optional elements. In particular, the application form should allow the country of origin the option to indicate factual information that had permitted the grant of protection in respect of the appellation of origin in question. Such factual information could consist of elements that had helped in ascertaining that definition requirements were met and that the link between the product in question and a precise geographical area had been established.
2. The discussion on this suggestion is reflected in paragraphs 154 to 176 of the Draft Report of the second session of the Working Group (document LI/WG/DEV/2/5 Prov.). As this discussion shows, factual information as referred to above would be helpful for competent Authorities of other member States to better understand the merits or legitimacy of the protection granted. Moreover, it would allow the public and possibly affected traders and trademark holders to be informed properly of the elements on which protection of the appellation of origin in question is based.
3. It is, therefore, proposed that Rule 5(3) of the Lisbon Regulations be amended by the addition of an item (vi), as shown below.

#### *Rule 5*

#### *Requirements Concerning the International Application*

[...]

(3) [*Optional Contents of the International Application*] The international application may indicate or contain:

- (i) the addresses of the holders of the right to use the appellation of origin;
- (ii) one or more translations of the appellation of origin, in as many languages as the competent authority of the country of origin wishes;
- (iii) a statement to the effect that protection is not claimed for certain elements of the appellation of origin;
- (iv) a declaration that protection is renounced in one or more contracting countries, designated by name;
- (v) a copy in the original language of the provisions, decisions or registration referred to in paragraph (2)(a)(vi);
- (vi) a statement summarizing the grounds on the basis of which protection had been granted to the appellation of origin in question, including information or data concerning the boundaries of the production area and the connection between the specific quality or characteristics of the product and its geographical environment, used in support of its grant.**

**B. Proposed Amendment to Rule 16(1) Concerning Notifications of Invalidation**

4. As indicated in paragraph 34 of the Summary by the Chair (document LI/WG/DEV/2/4), as adopted by the Working Group at its second session, Rule 16(1) of the Lisbon Regulations might be amended by the addition of a requirement that the grounds, on the basis of which the effects of an international registration have been invalidated in the contracting country in question, be contained in notifications of invalidation.
5. The discussion leading to this suggestion is reflected in paragraphs 190 to 193 of the Draft Report of the second session of the Working Group (document LI/WG/DEV/2/5 Prov.). As this discussion shows, although a copy of the decision to invalidate the effects of an international registration already has 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.
6. It is, therefore, proposed that Rule 16(1) of the Lisbon Regulations be amended by the addition of a new item (v) and the transformation of the current item (v) into a new item (vi), as shown below.

*Rule 16*  
*Invalidation*

(1) [*Notification of Invalidation to the International Bureau*] Where the effects of an international registration are invalidated in a contracting country and the invalidation is no longer subject to appeal, the invalidation shall be notified to the International Bureau by the competent authority of that contracting country. The notification shall indicate or contain:

- (i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin;
- (ii) the authority that pronounced the invalidation;
- (iii) the date on which the invalidation was pronounced;
- (iv) where the invalidation concerns certain elements only of the appellation of origin, the elements concerned;
- (v) the grounds on the basis of which the invalidation has been pronounced;**
- (vi) a copy of the decision that invalidated the effects of the international registration.

[Annex II follows]

## DRAFT PROVISIONS FOR A POSSIBLE REVISION OF THE LISBON AGREEMENT OR A NEW TREATY SUPPLEMENTING THE LISBON AGREEMENT

### I. BASIS FOR PROTECTION AND DEFINITIONS

#### Comments on Draft Provision A

1. In view of paragraphs 20 to 23 of the Summary by the Chair (document LI/WG/DEV/2/4), as adopted by the Working Group at its second session, the draft provisions to be prepared by the International Bureau in respect of definitions should reflect:
  - (i) 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 (hereinafter referred to as the “TRIPS Agreement”);
  - (ii) a definition on appellations of origin which would not only include geographical denominations, as is currently the case, but also non-geographical denominations, provided they are traditionally known as referring to a product originating in a given geographical area;
  - (iii) the introduction of a concept of country of origin that would also apply to international intergovernmental organizations;
  - (iv) that countries sharing the territory of the geographical area of origin would have the option to register a geographical indication or appellation of origin jointly.
2. Draft Provision A below is intended to reflect these points. It refers to “Contracting Parties” instead of “countries”, as it is contemplated that not only “countries” would be entitled to accede to the international instrument in which the provision might be included, but also international intergovernmental organizations.
3. Draft Provision A has been constructed so as not to include a definition of “Contracting Party of origin”. The reason for doing so is two-fold. First, under item (iii), as referred to in the preceding paragraph, the geographical area of origin may have two “Contracting Parties of origin” – i.e., the intergovernmental organization in question and the member State of the intergovernmental organization where the geographical area of origin is situated. And second, under item (iv), as referred to in the preceding paragraph, the geographical area of origin will be situated in two or more Contracting Parties, which should all be regarded as “Contracting Party of origin”.
4. Instead, it is proposed that the procedure for the filing of international applications under Draft Provision B would determine by whom the international application can or should be filed.
5. As a result, a provision along the lines of paragraph 2 of Article 2 of the Lisbon Agreement is not retained in Draft Provision A. However, the element of “reputation”, as contained in that paragraph, had to be retained and is, therefore, incorporated in the definition of “appellation of origin” in paragraph 6(b) of Draft Provision A.

6. As regards the phrase “natural and human factors”, as contained in Article 2(1) of the Lisbon Agreement, diverging views have been expressed. Reference is made to paragraphs 101 and 105 of the Draft Report of the second session of the Working Group (document LI/WG/DEV/2/5 Prov.). Consequently, paragraph 6(b) of Draft Provision A reflects different options for this phrase.
7. Considerations as mentioned above in relation to the draft provisions in respect of definitions similarly apply in relation to the draft provisions to be prepared by the International Bureau in respect of the basis of protection, which should also reflect the four items mentioned above. Consequently, Draft Provision A combines provisions along the lines of Article 1 of the Lisbon Agreement with those of its Article 2 as well as those of Article 22.1 of the TRIPS Agreement.
8. Paragraph 2 of Draft Provision A would require Contracting Parties to protect both “geographical indications” and “appellations of origin”. This should not be understood to mean that Contracting Parties would be required to provide separate titles of protection for geographical indications and appellations of origin under their national or regional legislation. Paragraph 6 of Draft Provision A presents geographical indications as the genus and appellations of origin as a specific category of geographical indications, which are subject to stricter eligibility criteria and which might, as indicated below with regard to the proposed Draft Provisions D and E, benefit from more extensive protection than other geographical indications. However, Draft Provisions D and E have been constructed so as to take into account that there are also Contracting Parties which do not apply such a distinction and have established the same level of protection in respect of all geographical indications. Under Draft Provision D, Contracting Parties with such systems could limit themselves to protecting internationally registered appellations of origin as geographical indications. No specific provision is required in respect of the reverse situation, i.e., the situation in Contracting Parties with a national or regional system that parallels the distinction between geographical indications and appellations of origin under a system along the lines of the Draft Provisions proposed in this Annex.
9. Paragraph 3 of Draft Provision A would stipulate the dependency of internationally registered geographical indications and appellations of origin that also underlies the protection of internationally registered appellations of origin under the Lisbon Agreement and the protection of geographical indications under the TRIPS Agreement. Reference is made, in this regard, to the phrase “recognized and protected as such in the country of origin” in Article 1(2) of the Lisbon Agreement and the phrase “as long as it is protected as an appellation of origin in the country of origin” in Article 6 of the Lisbon Agreement; as well as Article 24.9 of the TRIPS Agreement, which reads as follows: “There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.”
10. Paragraph 4 of Draft Provision A aims to reflect the gist of paragraph 19 of the Summary by the Chair (document LI/WG/DEV/2/4), as adopted by the Working Group at its second session, i.e., the view that Article 1(2) of the Lisbon Agreement and Rule 5 of its Regulations allow for flexibility as regards the legal means by which recognition and protection should take place in the country of origin, as long as the legislation by which these legal means are established meet the requirements of Articles 2 and 3 of the Lisbon Agreement. Consequently, recognition and protection may be determined by *sui generis* legislation or other legislation and the actual grant of protection to individual appellations of origin under such legislation may, as reflected in paragraph 3 of Draft Provision A (which borrows wording from Rule 5(2)(a)(vi) of the Lisbon Regulations),

occur by virtue of a legislative or administrative act, a judicial decision or registration. The notion of “recognition” has not been retained in paragraph 4 of Draft Provision A, as the negotiating history of the Lisbon Agreement shows that it had been considered necessary to add the words “recognized and” before “protected” in Article 1(2) of the Lisbon Agreement so as to bring the provision into line with the principle that appellations of origin always relate to a product enjoying a certain renown. However, as mentioned above, the notion of “reputation” is contained in the definition of “appellation of origin” in draft paragraph 6(b).

<i>Existing Provisions</i>	<i>Draft Provision A</i>
<b>Article 1 of the Lisbon Agreement</b>	<b>Proposal</b>
<p>(1) The countries to which this Agreement applies constitute a Special Union within the framework of the Union for the Protection of Industrial Property.</p>	<p>(1) The <b>Contracting Parties</b> to which this Agreement applies constitute a Special Union within the framework of the Union for the Protection of Industrial Property.</p>
<p>(2) They undertake to protect on their territories, in accordance with the terms of this Agreement, the appellations of origin of products of the other countries of the Special Union, recognized and protected as such in the country of origin and registered at the International Bureau of Intellectual Property (hereinafter designated as “the International Bureau” or “the Bureau”) referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as “the Organization”).</p>	<p>(2) They undertake to protect on their territories, <b>in accordance with [Draft Provision E]</b>, the <b>geographical indications and</b> appellations of origin of products of the other <b>Contracting Parties</b> of the Special Union, registered <b>in accordance with the procedure under [Draft Provisions B and D]</b> at the International Bureau of Intellectual Property (hereinafter designated as “the International Bureau” or “the Bureau”) referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as “the Organization”).</p>
<b>Rule 5 of the Lisbon Regulations</b>	<p>(3) <b>Protection as stipulated in the preceding paragraph shall be provided in respect of a geographical indication or appellation of origin that meets the respective definition in paragraph 6 below and enjoys protection, granted by virtue of a legislative or administrative act, a judicial decision or registration, under a legal instrument applying in the geographical area of origin.</b></p>
<p>[...]</p> <p>(2) [<i>Mandatory Contents of the International Application</i>] (a) The international application shall indicate:</p> <p>[...]</p> <p>(v) the area of production of the product;</p>	

*Existing Provisions*

(vi) the title and date of the legislative or administrative provisions, the judicial decisions or the date and number of the registration by virtue of which the appellations of origin is protected in the country of origin.

[...]

**Article 22.1 of the TRIPS Agreement**

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

**Article 2 of the Lisbon Agreement**

(1) In this Agreement, "appellation of origin" means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

(2) The country of origin is the country whose name, or the country in which is situated the region or locality whose name, constitutes the appellation of origin which has given the product its reputation.

*Draft Provision A*

**(4) The legal instrument referred to in the preceding paragraph can be any national law or a law applying between the member states of an intergovernmental organization, provided it provides protection, as stipulated in [Draft Provision E], in respect of the geographical indication or appellation of origin in question, whether through *sui generis* legislation or other legislation.**

**(5) Notwithstanding the preceding paragraph, in case the geographical area of origin is situated in two or more Contracting Parties, the legal instrument may also be an international agreement concluded between the Contracting Parties concerned for the purpose of the establishment of a common geographical indication or appellation of origin.**

**(6) In this Agreement,**

**(a) an indication identifying a product because of its quality, reputation or other characteristic, essentially attributable to its geographical origin, is referred to as a geographical indication; and**

**(b) an indication identifying such a product, which has a reputation for its quality or other characteristics, due exclusively or essentially to the geographical environment in the area of [origin] [production], including natural [and] [and/or] [or] human factors, is referred to as an appellation of origin.**

**(7) In respect of appellations of origin, such indications can only consist of the geographical name of a country, region or locality or another denomination containing such a name or traditionally known as referring to the geographical area of [origin] [production].**



## II. FILING INTERNATIONAL APPLICATIONS

### Comments on Draft Provision B

11. For the reasons explained in the comments on Draft Provision A, it is proposed that Draft Provision B would determine by whom the international application can or should be filed.
12. Draft Provision B deals with four aspects of international applications, i.e., (1) where international applications are to be filed; (2) criteria for determining who has standing to file international applications; (3) the particulars to be indicated in the international application; and (4) irregularities affecting the date of the international registration.
13. In this regard, Draft Provision B is presented as containing adapted versions of the current provisions of Article 5(1) of the Lisbon Agreement and Rules 5(1), 5(2), 8(1) and 8(2) of the Lisbon Regulations.
14. Paragraphs 1 and 2 of Draft Provision B follow those provisions when determining that international registration takes place at the International Bureau of WIPO and that international applications are filed in the name of the beneficiaries of the geographical indication or appellation of origin in question. However, where the existing Lisbon system determines that the international application should be filed by the competent authority of the Contracting Party<sup>1</sup> in whose territory the geographical area of origin is situated, paragraph 2 of Draft Provision B hinges, instead, on the legislative or administrative act, judicial decision or registration by virtue of which protection was granted to the geographical indication or appellation of origin in question for determining who has standing to file an international application for the same.
15. Paragraphs 3 to 7 of Draft Provision B present three different options for the filing procedure.
16. Option 1 follows the concept of the existing Lisbon system by determining that international applications have to be filed by competent authorities, as identified by Contracting Parties. However, unlike under the Lisbon system, when an international application is filed, the Contracting Party (or Parties) whose competent authority presents the application should be the same as the Contracting Party (or Parties) under whose jurisdiction the legislative or administrative act, judicial decision or registration was issued by virtue of which protection was granted in respect of the geographical indication or appellation of origin in question.
17. Option 2 includes the same provision as the one contained in Option 1, but adds a second provision, which would allow that an international application may, as an alternative, be presented directly to the International Bureau by the beneficiaries of the geographical indication or appellation of origin, as referred to in paragraph 2, or by a federation or association representing them. This Option was included in view of the

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<sup>1</sup> Member States of the Lisbon Agreement are required to notify the International Bureau their competent authority under Rule 4 of the Lisbon Regulations.

conclusion of the Chair of the Working Group, as reflected in of paragraph 176, final sentence, of the Draft Report of the Second Session of the Working Group (document LI/WG/DEV/2/5) concerning a suggestion made by the Representative of OriGIn in their response to the Survey on the Lisbon system.

18. Option 3, finally, is based on a suggestion made by the Delegation of the Republic of Moldova at the second session of the Working Group, as reflected in paragraph 170 of the Draft Report of the second session of the Working Group (document LI/WG/DEV/2/5 Prov.) and referred to in the conclusions of the Chair, as contained in paragraph 176 of that document.

<i>Existing Provisions</i>	<i>Draft Provision B</i>
<b>Article 5 of the Lisbon Agreement</b>	<b>Proposal</b>
(1) The registration of appellations of origin shall be effected with the International Bureau, at the request of the Authorities of the countries of the Special Union, in the name of any natural persons or legal entities, public or private, having, according to their national legislation, the right to use such appellations.	(1) The registration of <b>geographical indications and</b> appellations of origin under this Agreement shall be effected with the International Bureau <b>in accordance with [Draft Provision D]</b> .
[...]	<b>(2) International applications for the registration of a geographical indication or an appellation of origin</b> shall be presented in the name of any natural persons or legal entities, public or private, <b>being</b> , according to the legislative or administrative <b>act</b> , judicial <b>decision</b> or registration <b>referred to in paragraph 3 of [Draft Provision A]</b> , the holder or holders of the right to use the <b>geographical indication</b> or appellation of origin <b>in question</b> .
<b>Rule 5 of the Lisbon Regulations</b>	<b>Option 1</b>
(1) [ <i>Presentation</i> ] An international application shall be presented to the International Bureau by the competent authority of the country of origin on the official form provided to that end and shall be signed by that authority.	<b>(3) Such</b> an international application shall be presented to the International Bureau by the <b>entity, notified as the competent authority for this purpose under the procedures of the Agreement by the Contracting Party concerned or, in the case of paragraph 5 of [Draft Provision A], the Contracting Parties concerned</b> .
(2) [ <i>Mandatory Contents of the International Application</i> ] (a) The international application shall indicate:	
(i) the country of origin;	

*Existing Provisions*

(ii) the holder or holders of the right to use the appellation of origin, designated collectively or, where collective designation is not possible, by name;

(iii) the appellation of origin for which registration is sought, in the official language of the country of origin or, where the country of origin has more than one official language, in one or more of those official languages;

(iv) the product to which the appellation applies;

(v) the area of production of the product;

(vi) the title and date of the legislative or administrative provisions, the judicial decisions or the date and number of the registration by virtue of which the appellation of origin is protected in the country of origin.

[...]

*Draft Provision B*

**Option 2**

**(3) (a) Such** an international application shall be presented to the International Bureau by the **entity, notified as the competent authority for this purpose under the procedures of the Agreement by the Contracting Party concerned or, in the case of paragraph 5 of [Draft Provision A], the Contracting Parties concerned.**

**(b) Alternatively, the international application may be presented directly to the International Bureau by the holder or holders of the right to use the geographical indication or appellation of origin in question, or a federation or association having legal standing to assert such rights, provided that the application is accompanied by a document signed by the competent authority referred to in sub-paragraph 3(a) certifying that the particulars specified in the international application correspond to the particulars in the legislative or administrative act, judicial decision or registration referred to in paragraph 2 above.**

**Option 3**

**(3) Such** an international application shall be presented to the International Bureau **by** the holder or holders of the right to use the **geographical indication or appellation of origin in question through the intermediary of the entity, notified as the competent authority for this purpose under the procedures of the Agreement by the Contracting Party concerned or, in the case of paragraph 5 of [Draft Provision A], the Contracting Parties concerned.**

*Existing Provisions*

*Draft Provision B*

(4) The international application shall indicate:

(i) **[the competent authority presenting the application] [details identifying the applicant or applicants];**

(ii) the holder or holders of the right to use the **geographical indication or** appellation of origin, designated collectively or, where collective designation is not possible, by name;

(iii) the **geographical indication or** appellation of origin for which registration is sought, in the official language or **official languages** of the **Contracting Party or Contracting Parties in question, as the case may be;**

(iv) the product **category** to which the **geographical indication or** appellation of origin applies;

(v) the **geographical** area of origin of the product;

(vi) the title and date of the legislative or administrative **act**, judicial **decision** or the date and number of the registration, **as referred to in paragraph 3 of [Draft Provision A].**

(5) **The** international application shall be presented on the official form provided to that end and signed by **[the competent authority presenting it] [the applicant or applicants].**

*Existing Provisions*

**Rule 8 of the Lisbon Regulations**

(1) [*Irregularities Affecting the Date of the International Registration*] Where an international application does not contain all the following particulars:

(i) the country of origin,

(ii) the holders of the right to use the appellation of origin,

(iii) the appellation of origin for which registration is sought,

(iv) the product to which the appellation applies,

the international registration shall bear the date on which the last of the missing particulars is received by the International Bureau.

(2) [*Date of the International Registration in All Other Cases*] In all other cases, the international registration shall bear the date on which the international application was received by the International Bureau.

[...]

*Draft Provision B*

**Options 1, 2 and 3**

(6) Where an international application does not contain all the following particulars:

(i) **[the competent authority presenting the application] [details identifying the applicant or applicants] [details identifying the applicant or applicants and the competent authority transmitting the application],**

(ii) the holder or holders of the right to use the **geographical indication or** appellation of origin,

(iii) **the geographical indication or** appellation of origin for which registration is sought,

(iv) the product to which the **geographical indication or** appellation of origin applies,

the international registration shall bear the date on which the last of the missing particulars is received by the International Bureau.

**Options 1 and 2**

(7) In all other cases, the international registration shall bear the date on which the international application was received by the International Bureau.

*Existing Provisions*

*Draft Provision B*

**Option 3**

**(7) In all other cases, the international registration shall bear the date on which the international application was received by the competent authority transmitting it, provided that the international application has been received by the International Bureau within a period of two months from that date.**

### III. ACCESSION CRITERIA FOR INTERGOVERNMENTAL ORGANIZATIONS

#### Comments on Draft Provision C

19. At the second session of the Working Group, wide support was expressed for opening up the Lisbon system to the accession of competent intergovernmental organizations. Reference is made to paragraphs 12 to 17 of the Summary by the Chair, as adopted by the Working Group (document LI/WG/DEV/2/4). Also, the criteria identified by the International Bureau to determine whether a given intergovernmental organization would be in a position to accede to the Lisbon Agreement were considered appropriate, relevant and acceptable by the Working Group.
20. These criteria can be found in paragraph 41 of document LI/WG/DEV/2/3. In order to align these criteria with Draft Provisions A and B, as proposed above, it is suggested that intergovernmental organizations should be required to have the ability to grant titles of protection in respect of geographical indications, or geographical indications and appellations of origin, and provide protection in respect of geographical indications, or geographical indications and appellations of origin, in accordance with Draft Provision E.
21. As indicated in paragraph 15 of the Summary by the Chair, as adopted by the Working Group (document LI/WG/DEV/2/4), it would have to be examined on an individual basis whether and how an intergovernmental organization interested to accede meets these criteria. In this regard, reference could be made to paragraphs 32 and 33 of the Draft Report of the second session of the Working Group, which reflects a number of issues related to the possible accession by the European Union (EU) and the African Intellectual Property Organization (OAPI), as identified with regard to the regional systems of OAPI and the EU on the basis of the study by the International Bureau, as contained in document LI/WG/DEV/2/3.
22. Clearly, as reflected in paragraph 16 of the Summary by the Chair, as adopted by the Working Group (document LI/WG/DEV/2/4), internal issues surrounding their possible accession would have to be dealt with by these Organizations themselves. However, some of the issues might also need to be addressed by the Working Group.

23. For example, should Draft Provision C explicitly allow an intergovernmental organization to accede, if its legislation for the protection of geographical indications or geographical indications and appellations of origin is not applicable in respect of all categories of products? And, if so, should then the member States of such an intergovernmental organization be allowed to accede to the extent that their legislation provides protection for products in categories not covered by the regional protection system?
24. Similar questions apply, if the intergovernmental organization only provides for the protection of geographical indications while appellations of origin can only be obtained at member State level.

#### *Draft Provision C*

##### *Eligibility for Becoming Party*

(1) *[States]* Any State which is party to the Paris Convention or which is a member of the Organization, and in respect of which titles of protection may be granted, either administered by the State itself or by an intergovernmental organization, may become party to this Agreement.

(2) *[Intergovernmental Organizations]* Any intergovernmental organization may become party to this Agreement if at least one member State of that intergovernmental organization is party to the Paris Convention or a member of the Organization, and the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Agreement, and declares that it has its own legislation binding on all its member States, under which titles of protection are granted and administered in respect of the subject-matter covered by this Agreement.

#### **IV. INTERNATIONAL REGISTRATION**

##### **Comments on Draft Provision D**

25. Paragraphs 1 and 2 of Draft Provision D address the issue, that a geographical indication or appellation of origin that is the subject of an international application under Draft Provision B may be protected under a legal instrument in the Contracting Party presenting the international application on the basis of a definition that contains other elements than the definitions of paragraph 6 of Draft Provision A. The Draft Provisions presented in the present document are based on the premise that an internationally registered geographical indication or appellation of origin, in order to be protectable, should meet the definition requirements of paragraph 6 of Draft Provision A. In this regard, under paragraphs 1 and 2 of Draft Provision D, it would be presumed that this is the case, if the definition in the legal instrument referred to in paragraph 4 or 5 of Draft Provision A, on the basis of which the geographical indication or appellation of origin was granted protection in the first place, is the same as the corresponding definition in paragraph 6 of Draft Provision A or otherwise can be considered to meet the requirements of that definition.

26. It is possible that the qualifications for an appellation of origin under Draft Provision A are met, but the geographical area of origin is situated in a Contracting Party that only provides protection on the basis of a definition that corresponds to the definition for geographical indications under Draft Provision A. In addition, there may be countries that provide protection in respect of geographical indications under the TRIPS Agreement without specifying a definition in their law. In this regard, reference is made to the Acts of the Diplomatic Conference that adopted the Lisbon Agreement in Lisbon in 1958. As reflected on page 859 of those Acts, the Fourth Commission of the Diplomatic Conference confirmed the view 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. "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."<sup>2</sup> 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. Paragraphs 1 and 2 of Draft Provision D have been constructed so as to cater for these situations.
27. As indicated in paragraph 8 above, some Contracting Parties may only provide protection in respect of "geographical indications", while others may provide protection in respect of "geographical indications" and "appellations of origin". In this connection, paragraph 6 of Draft Provision A presents geographical indications as the genus and appellations of origin as a specific category of geographical indications, which are subject to stricter eligibility criteria. Draft Provisions D and E have been constructed so as to take into account that some Contracting Parties may provide more extensive protection to appellations of origin than to other geographical indications. Paragraph 3 of Draft Provision D addresses the question as to how Contracting Parties, which do not apply such a distinction and have established the same level of protection in respect of all geographical indications, should protect international registrations of appellations of origin. As "appellations of origin" are defined as a specific category of geographical indications, it is suggested that these Contracting Parties should protect internationally registered appellations of origin as geographical indications. No specific provision is required in respect of the reverse situation, i.e., the situation in Contracting Parties with a national or regional system that parallels the distinction between geographical indications and appellations of origin under a system along the lines of the Draft Provisions proposed in this Annex.

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<sup>2</sup> Unofficial translation of the original French text.



*Existing Provisions*

*Draft Provision D*

**Article 5 of the Lisbon Agreement**

(1) The registration of appellations of origin shall be effected with the International Bureau, at the request of the Authorities of the countries of the Special Union, in the name of any natural persons or legal entities, public or private, having, according to their national legislation, the right to use such appellations.

[...]

**Article 7 of the Lisbon Agreement**

(1) Registration effected with the International Bureau in conformity with Article 5 shall ensure, without renewal, protection for the whole of the period referred to in the foregoing Article.

(2) A single fee shall be paid for the registration of each appellation of origin.

**Rule 7 of the Lisbon Regulations**

(1) [*Registration, Certificate and Notification*] Where the International Bureau finds that an international application satisfies the conditions set out in Rules 3(1) and 5, it shall enter the appellation of origin in the International Register, shall send a certificate of international registration to the authority that requested the registration and shall notify the international registration to the competent authority of those other contracting countries in respect of which protection has not been renounced.

**Proposal**

(1) The International Bureau shall register as an appellation of origin under this Agreement an appellation of origin, that is the subject of an international application in accordance with [Draft Provision B], **provided that the legislative or administrative act, judicial decision or registration on the basis of which its protection was granted in the Contracting Party that presented the application was issued on the basis of a legal instrument, as referred to in paragraph 4 or 5 of [Draft Provision A], providing protection in respect of appellations of origin on the basis of a definition that meets the requirements of the definition of paragraph 6(b) of [Draft Provision A] or, in the absence of such a definition, if the international application specifies the particulars on the basis of which these requirements would be met and the competent authority of the Contracting Party in question certifies that these particulars are contained in the legislative or administrative act, judicial decision or registration by virtue of which protection was granted.**

(2) Paragraph 1 shall apply *mutatis mutandis* with regard to a geographical indication, as applied for under this Agreement.

*Existing Provisions*

(2) [*Contents of the Registration*]  
An international registration shall contain or indicate:

(i) all the particulars given in the international application;

(ii) the language in which the International Bureau received the international application;

(iii) the number of the international registration;

(iv) the date of the international registration.

**Rule 8 of the Lisbon Regulations**

[...]

(3) [*Date of Effect of International Registration*] (a) An appellation of origin that is the subject of an international registration shall, in each contracting country that has not declared in accordance with Article 5(3) that it cannot ensure the protection of the appellation, or that has sent to the International Bureau a statement of grant of protection in accordance with Rule 11bis, be protected from the date of the international registration or, where a contracting country has made a declaration in accordance with subparagraph (b), from the date mentioned in that declaration.

(b) A contracting country may, in a declaration, notify the Director General that, in accordance with the law of that country, an appellation of origin that is the subject of an international registration is protected from a date that is mentioned in the declaration, which date shall however not be later than the date of expiry of the period of one year referred to in Article 5(3) of the Agreement.

*Draft Provision D*

**(3) Internationally registered appellations of origin shall be protected as stipulated in respect of appellations of origin in [Draft Provision E] in Contracting Parties providing protection in respect of appellations of origin separate from geographical indications and as geographical indications in Contracting Parties providing protection in respect of geographical indications on the basis of criteria that do not distinguish between geographical indications and appellations of origin.**

## V. SCOPE OF PROTECTION

### Comments on Draft Provision E

28. As mentioned in paragraph 7 above, considerations in relation to the draft provisions in respect of definitions, as contained in Draft Provision A, similarly apply in relation to the draft provisions in respect of the basis of protection, which should also reflect the four points specified in paragraph 1 above.
29. Furthermore, reference is made to what is mentioned in paragraph 27 above in relation to Draft Provision D.
30. The results of the Survey on the Lisbon system, as reflected in document LI/WG/DEV/2/2 and discussed by the Working Group at its second session, show that Lisbon member States generally understand usurpation and imitation to relate to products of the same kind, whereas non Lisbon States generally require clarification of those terms. Further, diverging views have been expressed as to whether the scope of protection under the current Article 3 of the Lisbon Agreement is sufficient. Those indicating that the scope of protection under that provision is not sufficient advocate, in particular, that the scope of protection should also cover products that are not of the same kind. In this respect, paragraph 40 of document LI/WG/DEV2/2 lists six categories of criteria for determining such protection, as deduced from the various contributions to the Survey on the Lisbon system. Each of these criteria approaches the issue from a different angle. Paragraphs 41 to 44 of that document further indicate that some of these criteria have been called unacceptable in other contributions. For the discussion on the scope of protection at the second session of the Working Group, reference is made to paragraphs 136 to 153 of the Draft Report of that session, as contained in document LI/WG/DEV/2/5 Prov.
31. Draft Provision E aims to reflect, in a synthesized way, the various suggestions made with regard to the scope of protection in respect of appellations of origin. This is done in the form of two options, of which one (Option 1) is presented rather as an amended version of the current Article 3 of the Lisbon Agreement, while the other (Option 2) rather groups criteria presented as alternatives to those contained in Article 3 of the Lisbon Agreement. In respect of the last part of Option 1, reference is made to paragraphs 29 and 37 of document LI/WG/DEV/2/2.
32. Reference is also made to paragraph 20 of the Summary by the Chair (document LI/WG/DEV/2/4), as adopted at the second session of the Working Group, which indicates that the Chair noted that, for some participants, two separate definitions, as contained in this Annex II, would imply differences in the scope of protection. This suggestion has been reflected in Draft Provision E by presenting, in its paragraph 1, the scope of protection in respect of appellations of origin on the basis of the model of Article 3 of the Lisbon Agreement and, in its paragraph 2, the scope of protection in respect of geographical indications on the basis of the model of the relevant provisions of the TRIPS Agreement.
33. Finally, paragraph 6 of Draft Provision E clarifies that protection as stipulated in Draft Provision E would be protection to be provided in respect of geographical indications and appellations of origin at a minimum and would, consequently, not prevent Contracting Parties from providing more extensive protection or even the same level of protection in respect of both.

*Existing Provisions*

*Draft Provision E*

**Article 3 of the Lisbon Agreement**

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.

**Article 4 of the Lisbon Agreement**

The provisions of this Agreement shall in no way exclude the protection already granted to appellations of origin in each of the countries of the Special Union by virtue of other international instruments, such as the Paris Convention of March 20, 1883, for the Protection of Industrial Property and its subsequent revisions, and the Madrid Agreement of April 14, 1891, for the Repression of False or Deceptive Indications of Source on Goods and its subsequent revisions, or by virtue of national legislation or court decisions.

**Article 22 of the TRIPS Agreement**

2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

**Proposal**

**(1) Subject to paragraph 3 of [Draft Provision D], Contracting Parties shall protect an internationally registered appellation of origin against:**

**Option 1**

**any [use of the appellation of origin, or its registration as a trademark, in respect of a product, whether or not of the same kind, that amounts to] usurpation, [evocation] or imitation, even if the true origin of the product is indicated or if the appellation of origin is used in translated form or accompanied by terms such as "kind", "type", "make", "imitation", or the like [or if the product originates from within the geographical area of [production][origin] in question but does not meet the qualifications on the basis of which the appellation origin was granted protection];**

**Option 2**

**any direct or indirect commercial use, including through registration as a trademark, in respect of a product not covered by the registration in so far as that product is [comparable][identical or similar] [related or linked] to the product designated by the appellation of origin or in so far as use of the appellation of origin in question [exploits] [free-rides on] its reputation [would take unfair advantage of, or be detrimental to, the repute of the appellation of origin];**

*Existing Provisions*

3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

**Article 23 of the TRIPS Agreement**

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

*Draft Provision E*

**(2) Contracting Parties** shall protect **an internationally registered** geographical indication against **its** use in the designation or presentation of a good, or **its** registration as a trademark, **if such use or registration [would result in a likelihood of confusion] [is of such a nature as to mislead the public] as to the geographical origin of the product concerned [or as to the composition of the product], or if such use exploits or [weakens the reputation of] [dilutes] the geographical indication.**

**(3) In case of use in respect of products of the same kind by someone who is not the holder of the right to use the geographical indication or appellation of origin in question, unlawful use under paragraph 1 or 2 shall be presumed.**

**(4) In the case of homonymous appellations of origin and geographical indications, Contracting Parties shall protect each of the appellations of origin or geographical indications in question, subject to paragraph 5 below. Such protection shall be subject to** practical conditions taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

**(5) A Contracting Party may not accord protection, as stipulated in this Agreement, in respect of an appellation of origin or a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.**

*Existing Provisions*

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

*Draft Provision E*

**(6)** The provisions of this Agreement shall in no way **exclude more extensive protection as may be available in a Contracting Party**. **Neither shall it** exclude the protection granted to appellations of origin **or geographical indications** in each of the countries of the Special Union by virtue of other international instruments, such as the Paris Convention of March 20, 1883, for the Protection of Industrial Property and its subsequent revisions, the Madrid Agreement of April 14, 1891, for the Repression of False or Deceptive Indications of Source on Goods and its subsequent revisions, **the TRIPS Agreement** or by virtue of national **or regional** legislation or court decisions.

**VI. PRIOR USE**

**Comments on Draft Provision F**

34. For the discussion on Article 5(6) of the Lisbon Agreement at the second session of the Working Group, reference is made to paragraphs 211 to 222 of document LI/WG/DEV/2/5. As a result of that discussion, the Summary by the Chair (document LI/WG/DEV/2/4), as adopted by the Working Group, indicates that “there was a clear split on this issue, but that the divide might not be so deep.”
35. Draft Provision F aims to reflect the suggestions made in the context of this discussion and does so:
- (i) by retaining provisions as contained in Article 5(6) on the basis of a longer time-limit within which prior use should be terminated (paragraph 1 of Draft Provision F in respect of appellations of origin and paragraph 2 in respect of geographical indications);
  - (ii) by incorporating an alternative version of the provisions under (i) above, which limits their scope to prior use as a generic (paragraph 1 of Draft Provision F in respect of appellations of origin and paragraph 2 in respect of geographical indications);
  - (iii) by safeguarding prior rights to use a trademark for a sign, that corresponds to an internationally registered geographical indication or appellation of origin, from the scope of Draft Provision E, except when the earlier trademark was acquired in bad faith;

- (iv) by including provisions indicating that coexistence of the earlier trademark and the geographical indication or appellation of origin would be the default option, unless the Contracting Party concerned would refuse the geographical indication or appellation of origin, under paragraph 2 of Draft Provision G, on the basis of the earlier trademark.
36. Cases concerning homonymous appellations of origin or geographical indications are dealt with in paragraphs 4 and 5 of Draft Provision E.

<i>Existing Provisions</i>	<i>Draft Provision F</i>
<b>Article 5 of the Lisbon Agreement</b>	<b>Proposal</b>
[...]	
<p>(6) If an appellation which has been granted protection in a given country pursuant to notification of its international registration has already been used by third parties in that country from a date prior to such notification, the competent Authority of the said country shall have the right to grant to such third parties a period not exceeding two years to terminate such use, on condition that it advise the International Bureau accordingly during the three months following the expiration of the period of one year provided for in paragraph (3), above.</p>	<p>(1) If an <b>appellation of origin</b>, which has been granted protection in a given <b>Contracting Party</b> pursuant to notification of its international registration <b>under this Agreement, was already in use</b> by third parties <b>[as a generic indication for a kind of products corresponding to the appellation of origin in question]</b> in that <b>Contracting Party</b> from a date prior to such notification, the competent authority of the said <b>Contracting Party</b> shall have the right to grant to such third parties a <b>[maximum] period of [five] [ten] years</b> to terminate such use, on condition that it advise the International Bureau accordingly within a period of <b>15 months from the abovementioned notification.</b></p>
<b>Rule 12 of the Lisbon Regulations</b>	
<p>(1) <i>[Notification to the International Bureau]</i> Where the competent authority of a contracting country gives notice to the International Bureau that a period has been granted to third parties in that country to terminate the use of an appellation of origin in that country in accordance with Article 5(6) of the Agreement, such notice shall be signed by that authority and shall indicate:</p>	<p>(2) <b>Paragraph 1 above shall apply <i>mutatis mutandis</i> in respect of a geographical indication that is identical with a term customary in common language as the common name for certain goods or services in the territory of the Contracting Party in question or the customary name of a grape variety.</b></p>

*Existing Provisions*

(i) the number of the international registration concerned, preferably accompanied by other information enabling the identity of the international registration to be confirmed, such as the name of the appellation of origin;

(ii) the identity of the third parties concerned;

(iii) the period granted to the third parties;

(iv) the date from which the time limit begins, it being understood that this date may not be later than the date on which the three-month period referred to in Article 5(6) of the Agreement expires.

(2) *[Entry in the International Register and Notification to the Competent Authority of the Country of Origin]* Subject to the notice referred to in paragraph (1) being sent by the competent authority to the International Bureau within three months from expiry of the period of one year laid down in Article 5(3) of the Agreement, the International Bureau shall enter such notice in the International Register together with the particulars shown therein and shall notify a copy of the notice to the competent authority of the country of origin.

**Article 24 of the TRIPS Agreement**

[...]

(4) Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related

*Draft Provision F*

**(3) [Draft Provision E] does not apply in the case of use based on a prior trademark right in a given Contracting Party, unless the trademark was acquired in bad faith [or to the extent that its right holder has entered into an agreement with the holders of the right to use the appellation of origin to terminate use of the trademark], provided that the competent authority of the Contracting Party in question, or the right holder of the prior trademark, has advised the International Bureau, for its recording in the International Register, of the existence of the prior trademark right before the expiration of a period of one year from the date on which the international registration of the appellation of origin or geographical indication concerned was published by the International Bureau.**

**(4) The preceding paragraphs do not preclude the situations in question to be grounds for refusal, as referred to in [Draft Provision G], or for invalidation of the effects of a international registration in a given Contracting Party by virtue of a judicial decision pronouncing the invalidation on the basis of a legitimate earlier right.**



*Existing Provisions*

goods or services in the territory of that Member either (a) for at least 10 years preceding the date of publication of the international registration or (b) in good faith preceding that date.

(5) Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

(6) Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

*Draft Provision F*

*Existing Provisions*

(7) A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

(8) The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

[...]

*Draft Provision F*

**VII. PROCEDURES IN CONTRACTING PARTIES PRIOR TO THE ISSUANCE OF POSSIBLE REFUSALS AND FOR CHALLENGING REFUSALS ISSUED**

**Comments on Draft Provision G**

37. As far as Draft Provision G concerns procedures in Contracting Parties prior to the issuance of possible refusals, reference is made to the suggestions reflected in paragraphs 74 to 77 of document LI/WG/DEV/2/2.
38. The proposed incorporation in Draft Provision G of provisions concerning procedures in Contracting Parties for challenging refusals issued is based on the suggestion contained in paragraph 98 of document LI/WG/DEV/2/2.
39. In respect of paragraph 5 of Draft Provision G, the Working Group might wish to address the question as to whether the provision should also specify that interested parties would, alternatively, have the opportunity to resort to arbitration or mediation.

*Existing Provisions*

**Article 5 of the Lisbon Agreement**

[...]

(2) The International Bureau shall, without delay, notify the Authorities of the various countries of the Special Union of such registrations, and shall publish them in a periodical.

(3) The Authority of any country may declare that it cannot ensure the protection of an appellation of origin whose registration has been notified to it, but only in so far as its declaration is notified to the International Bureau, together with an indication of the grounds therefor, within a period of one year from the receipt of the notification of registration, and provided that such declaration is not detrimental, in the country concerned, to the other forms of protection of the appellation which the owner thereof may be entitled to claim under Article 4, above.

(4) Such declaration may not be opposed by the Authorities of the countries of the Union after the expiration of the period of one year provided for in the foregoing paragraph.

(5) The International Bureau shall, as soon as possible, notify the Authority of the country of origin of any declaration made under the terms of paragraph (3) by the Authority of another country. The interested party, when informed by his national Authority of the declaration made by another country, may resort, in that other country, to all the judicial and administrative remedies open to the nationals of that country.

*Draft Provision G*

**Proposal**

(1) **Once registered, the International Bureau shall notify the internationally registered geographical indication or appellation of origin to the competent authorities of the Contracting Parties and shall publish it.**

(2) **The competent authority of a Contracting Party may notify a declaration, [ex officio if its legislation so permits or at the request of an interested party], indicating [duly substantiated] grounds on the basis of which the grant of protection in respect of an international registration, as notified to it under paragraph 1 above, is refused. Such a declaration of refusal must be notified to the International Bureau within a period of one year from its receipt of the notification referred to in paragraph 1 above and shall be without prejudice to any protection for the geographical indication or appellation of origin in question, as referred to in paragraph 6 of [Draft Provision E], which may be available in the Contracting Party concerned.**

(3) **Interested parties shall be afforded a reasonable opportunity to file petitions for the competent authority to issue a refusal under paragraph 2 above.**

(4) **The International Bureau shall, as soon as possible, notify [[the competent authority of the Contracting Party or Contracting Parties in whose territory the geographical area of origin of the geographical indication or appellation of origin is situated] and [the holder or holders of the right to use the geographical indication or appellation of origin]] of any declaration of refusal made, as referred to above.**

*Existing Provisions*

*Draft Provision G*

**(5) Interested parties shall be afforded a reasonable opportunity to negotiate the withdrawal of a refusal or to resort, in a Contracting Party whose competent authority has issued a refusal, as referred to above, to all judicial and administrative remedies open to the nationals of that Contracting Party.**

[End of Annex II and of document]