

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

**Ninth Session  
Geneva, June 23 to 27, 2014**

### **DRAFT REVISED LISBON AGREEMENT ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS**

*prepared by the Secretariat*

1. Following the eighth session of the Working Group on the Development of the Lisbon System (Appellations of Origin) (hereinafter referred to as “the Working Group”), which took place in Geneva from December 2 to 6, 2013, the International Bureau of the World Intellectual Property Organization (WIPO) has prepared a revised version of the draft Revised Lisbon Agreement, as set out in document LI/WG/DEV/8/2, as requested by the Working Group and along the lines of the guidance it provided at that session. Draft Regulations, as revised, are contained in document LI/WG/DEV/9/3. Notes explaining the various provisions of the draft Revised Lisbon Agreement and draft Regulations are contained in documents LI/WG/DEV/9/4 and LI/WG/DEV/9/5, respectively.
2. It is recalled that the Working Group is reviewing the international system of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (hereinafter referred to as “the Lisbon Agreement”) with a view to improving the Lisbon system so that it might attract a wider membership, while preserving the principles and objectives of the Lisbon Agreement. On this basis, the Working Group is working towards a revision of the Lisbon Agreement that would involve: (i) the refinement of its current legal framework; (ii) the inclusion of provisions specifying that the Lisbon system also applies in respect of geographical indications; and (iii) the inclusion of the possibility of accession by intergovernmental organizations.

3. Following the progress made at its seventh session, the Working Group recommended that the Lisbon Union Assembly approve the convening of a Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015, with the exact dates and venue to be decided by a preparatory committee meeting (document LI/WG/DEV/7/6, paragraphs 18 and 19). The Assembly of the Lisbon Union approved the proposed roadmap at its twenty-ninth (20<sup>th</sup> ordinary) session in September/October 2013. Following the eighth session of the Working Group in December 2013, two further Working Group sessions will be held in 2014 – the ninth session, from June 23 to 27, and the tenth session, from October 27 to 31. As agreed by the Working Group at its eighth session, the tenth session would be held in conjunction with the meeting of the preparatory committee for the Diplomatic Conference and would focus on technically preparing the texts of the draft Revised Lisbon Agreement and the draft Regulations for the Diplomatic Conference and on reducing the number of pending issues, where possible. At that session, resolved issues would not be re-opened and proposals and discussions should be limited to pending issues (document LI/WG/DEV/8/6, paragraphs 17 and 18).

4. As the current Lisbon Agreement will continue to apply as long as not all its member States have become party to the Revised Lisbon Agreement that may be adopted at such a Diplomatic Conference, the Working Group might consider whether, with a view to aligning the current Lisbon Agreement as much as possible with the Revised Lisbon Agreement, certain provisions resulting from the review of the Lisbon system could also be the subject of possible amendments to the Regulations of the Lisbon Agreement itself or of interpretative statements by the Lisbon Union Assembly concerning provisions of the Lisbon Agreement. Such amendments would, moreover, allow for early implementation of such provisions.

5. *The Working Group is invited to:*

*(i) comment on the draft provisions contained in the Annex to the present document;*

*(ii) make any suggestions concerning the preparation of the tenth session of the Working Group and the preparatory committee meeting;*

*(iii) comment on paragraph 4, above.*

[Annex follows]

## **DRAFT REVISED LISBON AGREEMENT ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS**

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## Preamble

The Contracting Parties,

Recognizing the need to refine and modernize the legal framework of the system established under the Lisbon Agreement, while building on its principles and objectives and in the light of the relevant provisions of the TRIPS Agreement,

Desiring to introduce provisions for the possible accession by intergovernmental organizations,

Have agreed to revise the Lisbon Agreement as follows:

## Chapter I Introductory and General Provisions

### Article 1 Abbreviated Expressions

For the purposes of this Act, unless expressly stated otherwise:

- (i) "Lisbon Agreement" means the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958;
- (ii) "1967 Act" means the Lisbon Agreement as revised at Stockholm on July 14, 1967, and amended on September 28, 1979;
- (iii) "this Act" means the Revised Lisbon Agreement as established by the present Act;
- (iv) "Regulations" means the Regulations as referred to in Article 25;
- (v) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised and amended;
- (vi) "Madrid Agreement on Indications of Source" means the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, of April 14, 1891, as revised and amended<sup>1</sup>;
- (vii) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights of April 15, 1994, as set out in Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization and as amended;
- (viii) "International Register" means the International Register maintained by the International Bureau in accordance with Article 4 as the official collection of data concerning international registrations of appellations of origin and geographical indications, regardless of the medium in which such data are maintained;
- (ix) "international registration" means an international registration recorded in the International Register;
- (x) "application" means an application for international registration;
- (xi) "registered" means entered in the International Register in accordance with this Act;
- (xii) "geographical area of origin" means a geographical area as referred to in Article 2(2);

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<sup>1</sup> *Pro memoria*: the inclusion of this item depends on whether the Madrid Agreement on Indications of Source will be mentioned in Article 10(3).

(xiii) “trans-border geographical area” means a geographical area situated in, or covering, adjacent Contracting Parties;

(xiv) “Contracting Party” means any State or intergovernmental organization party to this Act;

(xv) “Contracting Party of Origin” means the Contracting Party where the geographical area of origin is situated or the Contracting Parties where the trans-border geographical area of origin is situated;

(xvi) “Competent Authority” means an entity designated in accordance with Article 3;

(xvii) “beneficiaries” means the natural or legal persons entitled under the law of the Contracting Party of Origin to use an appellation of origin or a geographical indication;

(xviii) “intergovernmental organization” means an intergovernmental organization eligible to become party to this Act in accordance with Article 28(1)(iii);

(xix) “Organization” means the World Intellectual Property Organization;

(xx) “Director General” means the Director General of the Organization;

(xxi) “International Bureau” means the International Bureau of the Organization.

## **Article 2** Subject-Matter

(1) *[Appellations of Origin and Geographical Indications]* (a) This Act applies in respect of:

(i) any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality [, reputation] or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors<sup>2</sup> [, and which has given the good its reputation]; as well as

(ii) any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

(b) In this Act, denominations as referred to in item (i) of paragraph (1)(a) are identified by the term “appellation of origin” and indications as referred to in item (ii) of paragraph (1)(a) are identified by the term “geographical indication”, regardless of how such denominations or indications are identified in the Contracting Party of Origin or in other Contracting Parties.

(2) *[Possible Geographical Areas of Origin]* A geographical area of origin as referred to in paragraph (1)(a) may consist of the entire territory of the Contracting Party of Origin or a region, locality or place in the Contracting Party of Origin. [This does not exclude the application of this Act in respect of a geographical area of origin, as referred to in paragraph (1)(a), consisting of a trans-border geographical area, subject to Article 5(4).]

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<sup>2</sup> The geographical environment of the area of production may be determined predominantly by natural factors or predominantly by human factors.

**Article 3**  
Competent Authority

Each Contracting Party shall designate an entity which shall be responsible for the administration of this Act in its territory and for communications with the International Bureau under this Act and the Regulations. The Contracting Party shall notify the name and contact details of such Competent Authority to the International Bureau, as specified in the Regulations.

**Article 4**  
International Register

The International Bureau shall maintain an International Register recording international registrations effected under this Act, under the Lisbon Agreement and the 1967 Act, or under both, and data relating to such international registrations.

**Chapter II**  
**Application and International Registration**

**Article 5**  
Application

- (1) *[Place of Filing]* Applications shall be filed with the International Bureau.
- (2) *[Application Filed by Competent Authority]* Subject to paragraph (3), the application for the international registration of an appellation of origin or a geographical indication shall be filed by the Competent Authority in the name of:
  - (i) the beneficiaries; or
  - (ii) a legal entity which has legal standing to assert the rights of the beneficiaries or other rights in the appellation of origin or the geographical indication, such as, for instance, a federation or association representing the beneficiaries, or a group of producers representing them, whatever its composition and regardless of the legal form in which it presents itself.
- (3) *[Application Filed Directly by the Beneficiaries or a Legal Entity]* (a) If the legislation of the Contracting Party of Origin so permits, the application may be filed by the beneficiaries or by the legal entity referred to in paragraph (2)(ii).
  - (b) Subparagraph (a) applies subject to a declaration from the Contracting Party that its legislation so permits. Such declaration may be made by the Contracting Party at the time of deposit of its instrument of ratification or accession or at any later time. Where the declaration is made at the time of the deposit of its instrument of ratification or accession, it shall take effect upon the entry into force of this Act with respect to that Contracting Party. Where the declaration is made after the entry into force of this Act with respect to the Contracting Party, it shall take effect three months after the date on which the Director General has received the declaration.
- [(4) *[Possible Joint Application by Adjacent Contracting Parties]* (a) In case of a geographical area of origin, as referred to in Article 2(1)(a), consisting of a trans-border geographical area, the adjacent Contracting Parties may agree to act as a single Contracting Party of Origin by filing an application jointly, on the basis of Article 2(1)(a)(i) or Article 2(1)(a)(ii), depending upon the protection they have granted jointly, and through a commonly designated Competent Authority.

(b) Such an application may also be filed by the beneficiaries, or a legal entity as referred to in paragraph (2)(ii), on the understanding that the adjacent Contracting Parties have jointly made the declaration referred to in paragraph (3)(b).]

(5) *[Mandatory Contents]* The Regulations shall specify the mandatory particulars that must be included in the application, in addition to those specified in Article 6(3).

(6) *[Optional Contents]* The Regulations may specify the optional particulars that may be included in the application.

## **Article 6**

### International Registration

(1) *[Formal Examination by the International Bureau]* Upon receipt of an application for the international registration of an appellation of origin or a geographical indication in due form, as specified in the Regulations, the International Bureau shall register the appellation of origin, or the geographical indication, in the International Register.

(2) *[Date of International Registration]* Subject to paragraph (3), the date of the international registration shall be the date on which the application was received by the International Bureau.

(3) *[Date of International Registration Where Particulars Missing]* Where the application does not contain all the following particulars:

(i) the identification of the Competent Authority or, in the case of Article 5(3), the applicant or applicants,

(ii) the details identifying the beneficiaries and, where applicable, the legal entity referred to in Article 5(2)(ii),

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

(iv) the good or goods to which the appellation of origin, or the geographical indication, applies,

(v) the date of the registration, the legislative or administrative act or the judicial or administrative decision by virtue of which protection was granted to the appellation of origin or to the geographical indication in the Contracting Party of Origin,]

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

(4) *[Publication and Notification of International Registrations]* The International Bureau shall, without delay, publish each international registration and notify the Competent Authority of each Contracting Party of the international registration.

## **Article 7**

### Fees

(1) *[Registration Fee]* International registration of each appellation of origin, and each geographical indication, shall be subject to payment of the fee specified in the Regulations.

(2) *[Other Fees]* (a) The Regulations shall specify the fees to be paid in respect of other entries in the International Register and for the supply of extracts, attestations, or other information concerning the contents of the international registration.



(b) The Assembly may establish a fee to be paid for the maintenance of each international registration, if and to the extent to which receipts from the sources indicated in Article 24(3)(i) to (iv) do not suffice to cover the expenses of the Special Union.

(3) *[Fee Reductions]* Reduced fees shall be established by the Assembly in respect of certain international registrations of appellations of origin, and in respect of certain international registrations of geographical indications, in particular those in respect of which the Contracting Party of Origin is a developing country or a least-developed country.

[(4) *[Individual Complementary Fee]* (a) Any Contracting Party may, in a declaration, notify the Director General that the protection resulting from international registration shall extend to it only if such extension of protection is specially requested and if an individual complementary fee is paid to cover its cost of substantive examination of the international registration. The amount of such fee shall be indicated in the declaration and can be changed in further declarations. The said amount may not be higher than the equivalent of the amount required under the national or regional legislation of the Contracting Party diminished by the savings resulting from the international procedure.

(b) Non-payment of such individual complementary fee shall have the effect that protection is renounced in respect of the Contracting Party requiring the fee.]

### **Article 8**

#### Period of Validity of International Registrations

(1) *[Dependency]* International registrations shall be valid indefinitely, on the understanding that the protection of a registered appellation of origin or geographical indication shall no longer be required if the denomination constituting the appellation of origin, or the indication constituting the geographical indication, is no longer protected in the Contracting Party of Origin.

(2) *[Cancellation When Protection Ceases in the Contracting Party of Origin]* In case the denomination constituting a registered appellation of origin, or the indication constituting a registered geographical indication, is no longer protected in the Contracting Party of Origin, the Competent Authority of the Contracting Party of Origin shall request cancellation of the international registration, in accordance with the procedures specified in the Regulations.

(3) *[Possible Maintenance Fee]* Notwithstanding paragraph (1), an international registration shall be cancelled if the fee referred to in Article 7(2)(b) is not paid.

## **Chapter III Protection**

### **Article 9**

#### Commitment to Protect

(1) *[Effect as Grant of Protection Under Applicable Law]* Each Contracting Party shall protect registered appellations of origin and geographical indications on its territory, within its own legal system and practice but in accordance with the terms of this Act, subject to any refusal, renunciation, invalidation or cancellation that may become effective with respect to its territory, and on the understanding that Contracting Parties that do not distinguish in their national or regional legislation as between appellations of origin and geographical indications shall not be

required to introduce such a distinction into their national or regional legislation, provided that that legislation treats registered appellations of origin as registered geographical indications.

(2) *[Date of Effect of International Registration]* (a) A registered appellation of origin or geographical indication shall, in each Contracting Party that has not refused protection in accordance with Article 15, or that has sent to the International Bureau a notification of grant of protection in accordance with Article 18, be protected from the date of the international registration or, where a Contracting Party has made a declaration in accordance with subparagraph (b), from the date mentioned in that declaration.

(b) A Contracting Party may, in a declaration, notify the Director General that, in accordance with its national or regional legislation, a registered appellation of origin or geographical indication 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 time limit for refusal specified in the Regulations in accordance with Article 15(1)(a).

### **Article 10**

#### Protection Under Laws of Contracting Parties or Other Instruments

(1) *[Freedom to Provide More Extensive Protection]* Each Contracting Party shall be free to provide more extensive protection than the protection stipulated in this Act.

(2) *[Form of Legal Protection]* Each Contracting Party shall be free to choose the type of legislation under which it establishes the protection stipulated in this Act, provided that such legislation meets the substantive requirements of this Act.

(3) *[Protection Under Other Instruments]* The provisions of this Act shall not in any way affect any other protection a Contracting Party may accord in respect of registered appellations of origin or registered geographical indications under its national or regional legislation, or under other international instruments [, such as the Paris Convention[, ][and] the Madrid Agreement on Indications of Source [, the TRIPS Agreement or a bilateral agreement]<sup>3</sup>].

### **Article 11<sup>4</sup>**

#### Protection in Respect of Registered Appellations of Origin and Geographical Indications

(1) *[Content of Protection]* Subject to the provisions of this Act, each Contracting Party shall extend to a registered appellation of origin, or a registered geographical indication, protection against:

- (a) any use of the appellation of origin or the geographical indication
  - (i) in respect of goods of the same kind as those to which the appellation of origin, or the geographical indication, applies not originating in the geographical

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<sup>3</sup> The reference to a specific international instrument only applies to a Contracting Party if it has acceded to such instrument or otherwise assumed international obligations under such instrument.

<sup>4</sup> Draft Agreed Statement by the Diplomatic Conference: "As the International Bureau is only authorized to refuse applications that do not meet the formal requirements of the Lisbon Agreement or the 1967 Act, or the applicable Regulations under these instruments, applications concerning appellations of origin consisting of or containing a term occurring in an appellation of origin already registered under the Agreement have not been refused by the International Bureau, and will not be refused by the International Bureau under this Act either, as this would amount to a refusal on a substantive ground. It is for each Contracting Party to decide, on the basis of its own legal system and practice, whether such appellations of origin or geographical indications may coexist on its territory or that one of them shall prevail."

area of origin or not complying with any other applicable requirements for using the appellation of origin, or the geographical indication; or

(ii) [which would amount to its usurpation or imitation [or evocation]; or]

(iii) [which would be detrimental to, or exploit unduly, its reputation],

even if the appellation of origin or the geographical indication is used with minor differences; if true origin of the goods is indicated; or if the appellation of origin, or the geographical indication, is used in translated form or accompanied by terms such as “style”, “kind”, “type”, “make”, “imitation”, “method”, “as produced in”, “like”, “similar”, or the like<sup>5</sup>;

(b) any other practice liable to mislead the consumer as to the true origin, provenance or nature of the goods.

(2) *[Use in a Trademark]* (a) Without prejudice to Article 13(1), a Contracting Party 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 registered appellation of origin, or a registered geographical indication, if use of the trademark would result in one of the situations covered by paragraph (1).

(b) However, there shall be no obligation for Contracting Parties to refuse or invalidate the registration of a trademark which contains a registered appellation of origin or a registered geographical indication, if the goods in respect of which the trademark is registered originate in the geographical area of origin and comply with any other applicable requirements for using the appellation of origin or the geographical indication.

(3) *[Alternative for paragraph (1)(a)(ii) and (iii)]* [Any State or intergovernmental organization may declare, when depositing its instrument of ratification or accession, that the provisions of paragraph (1)(a)(ii) and (iii) are not compatible with its legal system and practice and that it shall, instead of the protection stipulated in these items, extend to the registered appellation of origin or geographical indication protection against any use thereof in respect of goods that are not of the same kind as those to which the appellation of origin or geographical indication applies, if such use would indicate or suggest a connection between those goods and the beneficiaries, and is likely to damage the interests of the beneficiaries.]

## Article 12

### Protection Against [Acquiring a Generic Character] [Becoming Generic]

Subject to the provisions of this Act, registered appellations of origin and registered geographical indications [are protected against acquiring a generic character] [cannot [be considered to have] become generic]<sup>6</sup> as long as the denomination constituting the appellation of origin, or the indication constituting the geographical indication, is protected in the Contracting Party of Origin.

<sup>5</sup> Where certain elements of the denomination or indication constituting the appellation of origin or geographical indication [have a generic character] [are generic] in the Contracting Party of Origin, their protection under this subparagraph shall not be required in the other Contracting Parties.

<sup>6</sup> Article 12 is without prejudice to the application of the provisions of this Act concerning prior use, as, prior to international registration, the denomination or indication constituting the appellation of origin or geographical indication may already, in whole or in part, [have a generic character] [be generic] in a Contracting Party other than the Contracting Party of Origin, for example, because the denomination or indication, or part of it, is identical with a term customary in common language as the common name of a good or service in such Contracting Party, or is identical with the customary name of a grape variety in such Contracting Party.

**Article 13**  
Safeguards in Respect of Other Rights

(1) *[Prior Trademark Rights]* Without prejudice to Articles 15 and 19, where a registered appellation of origin or a registered geographical indication conflicts with a prior trademark applied for or registered, or acquired through use, in good faith in a Contracting Party,

OPTION A

[the protection of that appellation of origin or geographical indication in that Contracting Party shall not prejudice the eligibility for, or the validity of, the registration of the trademark, or the right to use the trademark, [taking into account] [provided that] the legitimate interests of [the owner of the trademark as well as those of] the beneficiaries of the rights in respect of the appellation of origin or the geographical indication [are taken into account] and provided that the public is not misled].

OPTION B

[the protection of that appellation of origin or geographical indication in that Contracting Party shall be subject to the rights conferred by the prior trademark under national or regional law along with any applicable exceptions to those rights].

OPTION C

[the appellation of origin or geographical indication and the prior trademark may coexist in that Contracting Party, provided that the circumstances of the case in the light of the law of the Contracting Party do not require that the prior trademark shall prevail, taking into account the legitimate interests involved].

[(2) *[Prior Rights in Respect of Another Appellation of Origin or Geographical Indication]* Without prejudice to Articles 15 and 19, where a registered appellation of origin or a registered geographical indication conflicts with another registered appellation of origin or registered geographical indication protected in a Contracting Party, each shall be protected by that Contracting Party, provided that the circumstances of the case in the light of the law of the Contracting Party do not require that one of them shall prevail, taking into account the legitimate interests involved.

(3) *[Personal Name Used in Business]* The provisions of this Act shall not 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.

(4) *[Rights Based on a Plant Variety or Animal Breed Denomination]* The provisions of this Act shall not prejudice the right of any person to use a plant variety or animal breed denomination in the course of trade, except where such plant variety or animal breed denomination is used in such a manner as to mislead the public.]

**Article 14**  
Enforcement Procedures and Remedies

Each Contracting Party shall make available effective legal remedies for the protection of registered appellations of origin and geographical indications and provide that legal proceedings for ensuring their protection may be brought by a public authority or by any interested party,

whether a natural person or a legal entity and whether public or private, depending on its legal system and practice.

## **Chapter IV**

### **Refusal and Other Actions in Respect of International Registrations**

#### **Article 15**

##### Refusal

(1) *[Refusal of Effects of International Registration]* (a) Within the time limit specified in the Regulations, the Competent Authority of a Contracting Party may notify the International Bureau of the refusal of the effects of an international registration in its territory. The notification of refusal may be filed by the Competent Authority *ex officio*, if its legislation so permits, or at the request of an interested party.

(b) The notification of refusal shall set out the grounds on which the refusal is based.

(2) *[Protection Under Other Instruments]* The notification of a refusal shall not be detrimental to any other protection that may be available, in accordance with Article 10(3), to the denomination or indication concerned in the Contracting Party to which the refusal relates.

(3) *[Obligation to Provide Opportunity for Interested Parties]* Each Contracting Party shall provide a reasonable opportunity, for anyone whose interests would be affected by an international registration, to request the Competent Authority to notify a refusal in respect of the international registration.

(4) *[Registration, Publication and Communication of Refusals]* The International Bureau shall record the refusal and the grounds for the refusal in the International Register. It shall publish the refusal and the grounds for the refusal and shall communicate the notification of refusal to the Competent Authority of the Contracting Party of Origin or, where the application has been filed directly in accordance with Article 5(3), the beneficiaries or the legal entity referred to in Article 5(2)(ii) as well as the Competent Authority of the Contracting Party of Origin.

(5) *[National Treatment]* Each Contracting Party shall make available to interested parties affected by a refusal the same judicial and administrative remedies that are available to its own nationals in respect of the refusal of protection for an appellation of origin or a geographical indication.

#### **Article 16**

##### Withdrawal of Refusal

(1) *[Procedures for the Withdrawal of Refusals]* A refusal may be withdrawn in accordance with the procedures specified in the Regulations. A withdrawal shall be recorded in the International Register.

(2) *[Negotiations]* The Contracting Party of Origin may enter into negotiations with a Contracting Party in respect of which a refusal has been recorded, in order to have the refusal withdrawn. Interested parties affected by a refusal shall be afforded a reasonable opportunity to request the Contracting Party of Origin to negotiate, with the Contracting Party in respect of which the refusal has been recorded, the possible withdrawal of such refusal.

**Article 17**  
Prior Use

(1) *[Phasing Out of Prior Use]* (a) Where a denomination constituting a registered appellation of origin, or an indication constituting a registered geographical indication, was, prior to the date of the international registration, in use in a Contracting Party by a third party and is not safeguarded under Article 13, that Contracting Party may, when it does not refuse the protection of the appellation of origin or geographical indication, grant to the third party a defined period, as specified in the Regulations, to terminate such use.

(b) Where a Contracting Party has refused the effects of an international registration under Article 15 on the ground of prior use as referred to in subparagraph (a), it may similarly grant to the third party a defined period to terminate such use in case it decides to withdraw the refusal under Article 16 or notify a grant of protection under Article 18.

(c) The Contracting Party shall notify the International Bureau of any such period, in accordance with the procedures specified in the Regulations.

(2) *[Coexistence]* Where a Contracting Party that has refused the effects of an international registration under Article 15 on the ground of use under a prior right, as referred to in Article 13, notifies the withdrawal of that refusal under Article 16 or a grant of protection under Article 18, the resulting protection of the appellation of origin or geographical indication shall not prejudice the prior right or its use, unless the protection was granted following the cancellation, non-renewal, revocation or invalidation of the prior right<sup>7</sup>.

**Article 18**  
Notification of Grant of Protection

The Competent Authority of a Contracting Party may notify the International Bureau of the grant of protection to a registered appellation of origin or geographical indication. The International Bureau shall record any such notification in the International Register and publish it.

**Article 19**  
Invalidation

(1) *[Opportunity to Defend Rights]* A Contracting Party may not invalidate the effects of an international registration, in part or in whole, in its territory without giving an opportunity to the beneficiaries to defend their rights. Such opportunity shall also be given to the legal entity referred to in Article 5(2)(ii).

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<sup>7</sup> In view of the safeguards under Article 13 in respect of use under prior trademarks and certain other rights, Article 17 does not provide for possible phasing out periods in respect of such use, unless the prior trademark or other right contains a denomination or indication that conflicts with a registered appellation of origin or geographical indication and is disclaimed under the prior trademark or other right, or manifestly does not form part of the subject-matter protected by the prior trademark or other right.

OPTION A

(2) *[Grounds for Invalidation]* The grounds on the basis of which a Contracting Party may pronounce invalidation shall include, in particular, those based on a prior right, as referred to in Article 13<sup>8</sup>.

OPTION B

(2) *[Grounds for Invalidation]* A Contracting Party may pronounce invalidation on the following grounds:

(i) a prior right, as referred to in Article 13, when the protection granted to the registered appellation of origin or geographical indication has been successfully challenged and the court decision is final; or

(ii) when compliance with the definition of an appellation of origin or geographical indication in the Contracting Party of Origin is not ensured anymore.

(3) *[Notification, Recordal and Publication]* The Contracting Party shall notify the invalidation of an international registration to the International Bureau, which shall record the invalidation in the International Register and publish it.

(4) *[Protection Under Other Instruments]* Invalidation shall not be detrimental to any other protection that may be available, in accordance with Article 10(3), to the denomination or indication concerned in the Contracting Party that invalidated the effects of the international registration.

**Article 20**

**Modifications and Other Entries in the International Register**

Procedures for the modification of international registrations and other entries in the International Register shall be specified in the Regulations.

**Chapter V**

**Administrative Provisions**

**Article 21**

**Membership of the Lisbon Union**

The Contracting Parties shall be members of the same Special Union as the States party to the Lisbon Agreement or the 1967 Act, whether or not they are party to the Lisbon Agreement or the 1967 Act.

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<sup>8</sup> The full spectrum of possible grounds for invalidation would appear to be: (1) grounds based on a prior right; (2) grounds based on genericness prior to the international registration; (3) grounds based on failure to meet the definition of an appellation of origin or a geographical indication; (4) grounds based on morality or public order; (5) grounds based on Article 10, or Article 10*bis*, of the Paris Convention.

**Article 22**  
Assembly of the Special Union

- (1) *[Composition]* (a) The Contracting Parties shall be members of the same Assembly as the States party to the 1967 Act.
- (b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.
- (c) Each delegation shall bear its own expenses.
- (2) *[Tasks]*
- (a) The Assembly shall:
- (i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Act;
  - (ii) give directions to the Director General concerning the preparation of revision conferences referred to in Article 26(1), due account being taken of any comments made by those members of the Special Union which have not ratified or acceded to this Act;
  - (iii) amend the Regulations;
  - (iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him or her all necessary instructions concerning matters within the competence of the Special Union;
  - (v) determine the program and adopt the biennial budget of the Special Union, and approve its final accounts;
  - (vi) adopt the financial Regulations of the Special Union;
  - (vii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Special Union;
  - (viii) determine which States, intergovernmental and non-governmental organizations shall be admitted to its meetings as observers;
  - (ix) adopt amendments to Articles 22 to 24 and 27;
  - (x) take any other appropriate action to further the objectives of the Special Union and perform any other functions as are appropriate under this Act.
- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.
- (3) *[Quorum]* (a) One-half of the members of the Assembly which have the right to vote on a given matter shall constitute a quorum for the purposes of the vote on that matter.
- (b) Notwithstanding the provisions of subparagraph (a), if, in any session, the number of the members of the Assembly which are States, have the right to vote on a given matter and are represented is less than one-half but equal to or more than one-third of the members of the Assembly which are States and have the right to vote on that matter, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the members of the Assembly which are States, have the right to vote on the said matter and were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of such members having thus expressed their vote or abstention attains the number of the members which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.



- (4) *[Taking Decisions in the Assembly]* (a) The Assembly shall endeavor to take its decisions by consensus.
- (b) Where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. In such a case,
- (i) each Contracting Party that is a State shall have one vote and shall vote only in its own name, and
- (ii) any Contracting Party that is an intergovernmental organization may vote, in place of its member States, with a number of votes equal to the number of its member States which are party to this Act, but no such intergovernmental organization shall participate in the vote if any one of its member States exercises its right to vote, and *vice versa*.
- (c) On matters concerning only States that are bound by the 1967 Act, Contracting Parties that are not bound by the 1967 Act shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.
- (5) *[Majorities]* (a) Subject to Articles 25(2) and 27(2), the decisions of the Assembly shall require two-thirds of the votes cast.
- (b) Abstentions shall not be considered as votes.
- (6) *[Sessions]* (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.
- (b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the members of the Assembly or on the Director General's own initiative.
- (c) The agenda of each session shall be prepared by the Director General.
- (7) *[Rules of Procedure]* The Assembly shall adopt its own rules of procedure.

### **Article 23** International Bureau

- (1) *[Administrative Tasks]* (a) International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.
- (b) In particular, the International Bureau shall prepare the meetings and provide the Secretariat of the Assembly and of such committees and working groups as may have been established by the Assembly.
- (c) The Director General shall be the Chief Executive of the Special Union and shall represent the Special Union.
- (2) *[Role of the International Bureau in the Assembly and Other Meetings]* The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly. The Director General, or a staff member designated by him, shall be *ex officio* Secretary of such a body.
- (3) *[Conferences]* (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any revision conferences.
- (b) The International Bureau may consult with intergovernmental and international and national non-governmental organizations concerning the said preparations.
- (c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(4) *[Other Tasks]* The International Bureau shall carry out any other tasks assigned to it in relation to this Act.

## **Article 24** Finances

(1) *[Budget]* (a) The Special Union shall have a budget.  
(b) The budget of the Special Union shall include the income and expenses specific to the Special Union and its contribution to the budget of expenses common to the Unions administered by the Organization.  
(c) Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) *[Coordination With Budgets of Other Unions]* The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) *[Sources of Financing of the Budget]* The budget of the Special Union shall be financed from the following sources:

- (i) fees collected under Article 7(1) and (2)(a);
- (ii) proceeds from the sale of, or royalties on, the publications of the International Bureau concerning the Special Union;
- (iii) gifts, bequests, and subventions;
- (iv) rents, interest, and other miscellaneous income;
- (v) any maintenance fees, as referred to in Article 7(2)(b).

(4) *[Fixing of Fees; Level of the Budget]* (a) The amounts of the fees referred to in paragraph (3)(i) shall be fixed by the Assembly on the proposal of the Director General.

(b) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the Financial Regulations of the Organization.

(5) *[Working Capital Fund]* The Special Union shall have a working capital fund which shall be constituted by a single payment made by each Member of the Special Union. If the fund becomes insufficient, the Assembly shall decide to increase it. The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General.

(6) *[Advances by Host State]* (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(7) *[Auditing of Accounts]* The auditing of the accounts shall be effected by one or more of the States members of the Special Union or by external auditors, as provided in the Financial Regulations of the Organization. They shall be designated, with their agreement, by the Assembly.

**Article 25**  
Regulations

- (1) *[Subject-Matter]* The details for carrying out this Act shall be established in the Regulations.
- (2) *[Amendment of Certain Provisions of the Regulations]* (a) The Regulations may specify that certain provisions of the Regulations may be amended only by unanimity or only by a three-fourths majority.
- (b) In order for the requirement of unanimity or a three-fourths majority no longer to apply in the future to the amendment of a provision of the Regulations, unanimity shall be required.
- (c) In order for the requirement of unanimity or a three-fourths majority to apply in the future to the amendment of a provision of the Regulations, a three-fourths majority shall be required.
- (3) *[Conflict Between This Act and the Regulations]* In the case of conflict between the provisions of this Act and those of the Regulations, the former shall prevail.

**Chapter VI**  
**Revision and Amendment**

**Article 26**  
Revision

- (1) *[Revision Conferences]* This Act may be revised by Diplomatic Conferences of the Contracting Parties. The convocation of any Diplomatic Conference shall be decided by the Assembly.
- (2) *[Revision or Amendment of Certain Articles]* Articles 22 to 24 and 27 may be amended either by a revision conference or by the Assembly according to the provisions of Article 27.

**Article 27**  
Amendment of Certain Articles by the Assembly

- (1) *[Proposals for Amendment]* (a) Proposals for the amendment of Articles 22 to 24, and the present Article, may be initiated by any Contracting Party or by the Director General.
- (b) Such proposals shall be communicated by the Director General to the Contracting Parties at least six months in advance of their consideration by the Assembly.
- (2) *[Majorities]* Adoption of any amendment to the Articles referred to in paragraph (1) shall require a three-fourths majority, except that adoption of any amendment to Article 22, and to the present paragraph, shall require a four-fifths majority.
- (3) *[Entry into Force]* (a) Except where subparagraph (b) applies, any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of those Contracting Parties which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on that amendment.

(b) Any amendment to Article 22(3) or (4) or to this subparagraph shall not enter into force if, within six months of its adoption by the Assembly, any Contracting Party notifies the Director General that it does not accept such amendment.

(c) Any amendment which enters into force in accordance with the provisions of this paragraph shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

## **Chapter VII** **Final Provisions**

### **Article 28** Becoming Party to This Act

- (1) *[Eligibility]* Subject to Article 29 and paragraphs (2) and (3) of the present Article,
- (i) any State which is party to the Paris Convention may sign and become party to this Act;
  - (ii) any other State may sign and become party to this Act if it declares that its legislation complies with the provisions of the Paris Convention concerning appellations of origin, geographical indications and trademarks;
  - (iii) any intergovernmental organization may sign and become party to this Act, provided that at least one member State of that intergovernmental organization is party to the Paris Convention and provided that the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Act and that, under the constituting treaty of the intergovernmental organization, legislation applies under which regional titles of protection can be obtained in respect of appellations of origin or geographical indications.
- (2) *[Ratification or Accession]* Any State or intergovernmental organization referred to in paragraph (1) may deposit
- (i) an instrument of ratification, if it has signed this Act, or
  - (ii) an instrument of accession, if it has not signed this Act.
- (3) *[Effective Date of Deposit]* (a) Subject to subparagraph (b), the effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.
- (b) The effective date of the deposit of the instrument of ratification or accession of any State that is a member State of an intergovernmental organization and in respect of which the protection of appellations of origin can only be obtained on the basis of legislation applying between the member States of the intergovernmental organization shall be the date on which the instrument of ratification or accession of that intergovernmental organization is deposited, if that date is later than the date on which the instrument of the said State has been deposited. However, this subparagraph does not apply with regard to States that are party to the Lisbon Agreement or the 1967 Act and shall be without prejudice to the application of Article 31 with regard to such States.

## Article 29

### Effective Date of Ratifications and Accessions

- (1) *[Instruments to Be Taken into Consideration]* For the purposes of this Article, only instruments of ratification or accession that are deposited by States or intergovernmental organizations referred to in Article 28(1) and that have an effective date according to Article 28(3) shall be taken into consideration.
- (2) *[Entry into Force of This Act]* This Act shall enter into force three months after five eligible parties referred to in Article 28 have deposited their instruments of ratification or accession.
- (3) *[Entry into Force of Ratifications and Accessions]* (a) Any State or intergovernmental organization that has deposited its instrument of ratification or accession three months or more before the date of entry into force of this Act shall become bound by this Act on the date of the entry into force of this Act.  
(b) Any other State or intergovernmental organization shall become bound by this Act three months after the date on which it has deposited its instrument of ratification or accession or at any later date indicated in that instrument.
- (4) *[International Registrations Effected Prior to Accession]* In the territory of the acceding State or intergovernmental organization, the benefits of this Act shall apply in respect of appellations of origin already registered under this Act at the time the accession becomes effective, subject to [Article 7(4) and] the provisions of Chapter IV, which shall apply *mutatis mutandis*. However, the acceding State or intergovernmental organization may specify, in a declaration attached to its instrument of ratification or accession, an extension of the time limit referred to in Article 15(1), and the periods referred to in Article 17, in accordance with the procedures specified in the Regulations in that respect.

## Article 30

### Prohibition of Reservations

No reservations to this Act are permitted.

## Article 31

### Application of the Lisbon Agreement and the 1967 Act

- (1) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act]* This Act alone shall be applicable as regards the mutual relations of States party to both this Act and the Lisbon Agreement or the 1967 Act.
- (2) *[Relations Between States Party to Both This Act and the Lisbon Agreement or the 1967 Act and States Party to the Lisbon Agreement or the 1967 Act Without Being Party to This Act]* Any State party to both this Act and the Lisbon Agreement or the 1967 Act shall continue to apply the Lisbon Agreement or the 1967 Act, as the case may be, in its relations with States party to the Lisbon Agreement or the 1967 Act that are not party to this Act.

**Article 32**  
Denunciation

- (1) *[Notification]* Any Contracting Party may denounce this Act by notification addressed to the Director General.
- (2) *[Effective Date]* Denunciation shall take effect one year after the date on which the Director General has received the notification or at any later date indicated in the notification. It shall not affect the application of this Act to any application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

**Article 33**  
Languages of this Act; Signature

- (1) *[Original Texts; Official Texts]* (a) This Act shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.
- (b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.
- (2) *[Time Limit for Signature]* This Act shall remain open for signature at the headquarters of the Organization for one year after its adoption.

**Article 34**  
Depositary

The Director General shall be the depositary of this Act.

[End of Annex and of document]