

Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications

**Thirty-Third Session
Geneva, March 16 to 20, 2015**

REVISED REPORT

prepared by the Secretariat

INTRODUCTION

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the Standing Committee” or “the SCT”) held its thirty-third session, in Geneva, from March 16 to 20, 2015.

2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Afghanistan, Argentina, Armenia, Australia, Austria, Belarus, Bosnia and Herzegovina, Brazil, Burkina Faso, Cambodia, Cameroon, Canada, Chile, China, Colombia, Côte d’Ivoire, Czech Republic, Denmark, Democratic People’s Republic of Korea, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Guinea, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Jamaica, Jordan, Kenya, Kuwait, Latvia, Lebanon, Lithuania, Mali, Mexico, Monaco, Morocco, Mozambique, Myanmar, Nepal, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Singapour, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, Uruguay, United Kingdom, United States of America, Viet Nam (81). The European Union was represented in its capacity as a special member of the SCT.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Union (AU), Benelux Organization for Intellectual Property (BOIP), South Centre (SC), World Trade Organization (WTO) (4).
4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), Bureau of European Design Associations (BEDA), European Communities Trade Mark Association (ECTA), International Trademark Association (INTA), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), Organization for an International Geographical Indications Network (oriGIn), Internet Corporation for Assigned Names and Numbers (ICANN) (8).
5. The list of participants is contained in Annex II of this document.
6. The Secretariat noted the interventions made and recorded them.

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the thirty-third session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.
8. Mr. Marcus Höpperger (WIPO) acted as Secretary to the SCT.

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

9. Mr. Adil El Maliki (Morocco) was elected Chair. Mr. Imre Gonda (Hungary) and Ms. Günseli Güven (Turkey) were elected Vice-Chairs of the Committee.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

10. The Delegation of Germany confirmed its statement made at the previous session of the SCT session concerning the adoption of the agenda. The Delegation emphasized that Germany still supported the convening of a diplomatic conference for the Design Law Treaty (DLT), as it stood before the SCT session of November 2014. The Delegation believed that the DLT was in the interest of all Member States. Nevertheless, the Delegation proposed removing the DLT from the Agenda of SCT. The texts, as they stood before November 2014, were mature enough for a diplomatic conference. The Delegation added that it saw no merit in further amendments of the texts and underlined that the DLT should not be dealt with within the SCT anymore. Finally, it expressed the view that if the Member States have the political will, the General Assembly could and should decide to convene a diplomatic conference.
11. The Delegation of Nigeria, on behalf of the African Group expressed the view that the subject matter of the DLT should remain on the Agenda.
12. The SCT adopted the draft Agenda (document SCT/33/1 Prov.2).

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-SECOND SESSION

13. The SCT adopted the draft Report of the thirty-second session (document SCT/32/6 Prov.).

General Statements

14. The Delegation of Romania, on behalf of the countries of the Group of Central European and Baltic States (CEBS), expressed confidence in the leadership of the Chair which would guide the Committee to conclude this session in an efficient and successful manner. The Delegation thanked the Secretariat for the preparation of the documentation and for the organization of the side-event in the framework of this session. The CEBS Group reaffirmed that the issue of the adoption of a DLT remained high on the SCT Agenda. The Delegation believed that it is only a matter of collective will to achieve it, and noted that much of the work has been already done by the Committee. The Delegation said that the Committee reached a significant landmark and should therefore be careful about the direction to take. The CEBS Group looked also forward to engaging in discussions on other topics, such as the protection of country names and geographical indications. The Delegation hoped that this session would help the SCT to get new perspectives on the interface between country names and individually owned trademark rights, so as to better understand the challenges associated with this topic. Following on this, the Delegation stated that there would be more chances that its decisions would go in the right direction. Finally, the CEBS Group reiterated its support to the proposal made by a group of countries in relation to geographical indications. The Delegation expressed the view that the connection between geographical indications and the Domain Name System (DNS) deserved to be part of future work in the SCT.

15. The Delegation of Pakistan, on behalf of the Asia-Pacific Group, thanked the Chair for his leadership in the work of the Committee, and commended the Secretariat for its work in preparing the session. The Asia-Pacific Group also believed that a fair intellectual property system, which balances the interests of right holders and the protection and promotion of the public welfare, was essential for universal progress. The Delegation believed that a balanced intellectual property system therefore needed to be duly cognizant of, and sensitive to, the diversity in development and needs of all Member States. The Delegation indicated that a balanced outcome of this meeting was vital to ensure benefits for all members. In order to assure effective implementation, any imposing obligation should be accompanied with augmented capacity to carry out that obligation. The Delegation underscored that the implementation of the proposed treaty would entail amendments of national laws, require new infrastructures, enhance national capacity and develop requisite legal skills to deal with increased numbers of applications. Therefore, the Group expressed the view that, in order to be realistically achievable, the treaty, while imposing obligations, should also provide adequate provisions for building capacity to meet those obligations. The Group strongly supported the inclusion of an article in the main text to ensure the provision of technical assistance in the proposed DLT. The Delegation said that the Group hoped this matter could be decided to the satisfaction of all Member States in this session in a manner which enables them to meet their responsibilities. The Asia-Pacific Group hoped to see progress towards consensus and achieving an acceptable work program on the issue of protection of country names and geographical indications. In conclusion, the Delegation said that members of the Asia-Pacific Group would contribute on specific agenda items in their national capacity. The Delegation expressed the commitment of the Group to participate in a constructive debate and a productive result in the discussions of this session.

16. The Delegation of Nigeria, speaking on behalf of the African Group, thanked the Chair for his expertise and leadership enabling the SCT to advance in its negotiations, and the Secretariat for its hard-work and commitment. The Delegation said that the discussions of this

Committee presented no new spheres. The Group recognized the dynamics of the phase of negotiations, and the need for political will to overcome the contentious issues and to ensure a productive session. The African Group recognized the important role of industrial designs in innovation and the global intellectual property system. The exponential growth of industrial design filings over the last decade attested to this new reality. The Delegation stated that WIPO was therefore engaged in a logical step and in a multilateral effort to establish binding guidelines to fasten such a growing field of intellectual property. The Delegation expressed the view that it was essential that the proposed DLT incorporates the different interests of WIPO Member States in order to reach consensus. The Delegation added that the DLT should take into account the different levels of development of WIPO Member States, and should ensure that all could benefit from it, and that each member be able participate in a fair manner. The Delegation recalled that based on this principle, the African Group requested a guarantee of an article on technical assistance in the lead-up to the convening of a diplomatic conference. The Delegation observed that the preparation for, and implementation of the proposed DLT would impose different kinds of significant burdens on the intellectual property offices of developing countries such as: financial, technological, administrative, legal and regulatory. The Delegation noted that this point had been previously communicated in this Committee. The Delegation deeply appreciated the support and understanding of all Member States of WIPO in this regard, and reiterated its request for a guarantee of an article on technical assistance in the draft DLT before the convening of a diplomatic conference. The African Group stated that it looked forward to a definitive resolution of this matter at this session. The Delegation expressed the concern of the African Group that the draft DLT aimed to provide a maximum list of requirements for the registration of industrial designs, with the effect of foreclosing national policy options. The Delegation stated that the request of its member states for the inclusion of the disclosure requirement to the draft DLT was premised on the maximalist views and the restrictive nature of Article 3 of the draft DLT; especially as industrial design protections cover not only the aesthetic whole or part of the appearance of an object, such as shapes, lines, contours, patterns, colours, texture but also materials of the product or its ornamentation. The Delegation stated that, furthermore, the protection of industrial designs varied from country to country; they are protected under patents, trademarks or copyright systems. The Delegation noted that the draft DLT does not define industrial design. To this end, if the physical expression of a product intended for industrial design protection embodies any form of genetic resources, traditional knowledge and/or traditional cultural expressions, the African Group believed that it was only appropriate that the disclosure of their source and origin should be part of the formalities for the protection of such designs. The Delegation said that the underlying principle was the broad subject-matter of the ornamental appearance of manufactured products, and the African Group reserved the right to make further textual proposals in the draft text of the DLT. The African Group thanked the Delegation of Jamaica for its proposal on the protection of country names. The Delegation stated that the subject of country names and nation branding was critical to the identity, cultural ownership and expression of the countries. The African Group looked forward to continued discussions on this topic and anticipated that the planned event on the protection of country names and nation branding be instructive and provide more information on the topic. The Delegation stated that similarly, the subject of Geographical Indications had become particularly vigorous due to the immense reach and the varying impact that an international norm-setting agreement on geographical indications could have. The African Group noted the proposal submitted by the Delegation of the United States of America, and the joint proposal submitted by the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Republic of Moldova, Spain and Switzerland. The Delegation observed that while geographical indications had long been in the realm of national interpretation, constructive discussions in this sphere can advance common understanding. Finally, the African Group reiterated its commitment to working towards a successful session of the SCT.

17. The Delegation of Argentina, on behalf of the Latin America and Caribbean Group (GRULAC) thanked the Secretariat for preparing the documents for consideration by the Committee. In relation to item 5 of the Agenda referring to industrial designs, the Group regretted that despite efforts made on different occasions, no agreement could be reached on convening a diplomatic conference for the adoption of a DLT. The Delegation said that if negotiations were resumed on the DLT, GRULAC would maintain its constructive position on the nature of the provisions on technical assistance and strengthened capacity building, if they provide effective cooperation for developing and least developed countries (LDCs). The Delegation underscored that GRULAC countries would require this type of support to implement the DLT. Regarding item 6 of the agenda referring to trademarks, GRULAC highlighted that work had been previously done by this Committee on the protection of country names. The Delegation stated that at the twenty-ninth session of the Committee, the Secretariat had submitted a study (document SCT/29/5) which presented the lack of consistent protection for country names. GRULAC recalled that at its thirtieth session, the Committee had decided to continue working on this point and had invited all delegations to submit proposals in writing to the Secretariat. Consequently, the draft text for a joint recommendation in relation to the protection of country names against registration and use as trademarks (document SCT/31/4) had been submitted to the Committee. This joint recommendation could serve as a guide to Member States in the process of examination and registration of trademarks to promote consistent and exhaustive protection of country names. The Delegation recalled that in the previous session of the SCT, a revised version of the draft joint recommendation was submitted to the Committee (document SCT/32/2). On this basis the Secretariat had organized a side-event which would provide general information on different aspects of country names and nation branding. In this connection, GRULAC thanked the Secretariat for organizing this activity which would certainly allow the Committee to increase its understanding of the issue. GRULAC recalled that the names of countries could be a useful opportunity for nation branding systems to provide value through the use of marks, especially in the case of developing countries. GRULAC reaffirmed its support for the debates and the continuation of work on the protection of country names. The Delegation reiterated that GRULAC expressed its full commitment to the success of this session. In relation to Item 7 of the agenda on Geographical Indications, GRULAC attached great importance to a balanced treatment on this issue.

18. The Delegation of the European Union, on behalf of the European Union and its member states, expressed its full support to the Chair in his efforts to achieve consensus on a recommendation to the General Assembly to convene a diplomatic conference on the draft design law formalities treaty. The Delegation emphasized the significant advantage that alignment and simplification of design registration formalities and procedures would provide to all users of the system. The Delegation indicated that users would mean national offices, but also small and medium-sized enterprises (SMEs) existing worldwide. As stated at the previous SCT session, the Delegation maintained that this text was technically mature, and that there was no need to re-open the articles for discussion. The Delegation noted however, that a proposal unrelated to design law formalities was inserted in the draft text during the previous session of this Committee. The Delegation was of the view that this proposal moved the text farther away from simplification and alignment of design registration formalities than ever. Therefore, the Delegation of the European Union declared that it could not support the reopening of a discussion on the draft Articles and Regulations, and suggested that the SCT should instead focus its efforts on a decision to recommend the convening of a diplomatic conference on the basis of the work done by the SCT, before its previous session. If no consensus could be reached on this issue, the Delegation would propose to suspend further substantive discussions on this topic. Referring to the protection of country names and nation branding, the Delegation of the European Union and its member states looked forward to the side event on the protection of country names and nation branding, which constituted a substantial awareness raising activity on this important topic. The Delegation said that it looked forward to discussing the possible study on geographical indications and domain names as presented in document SCT/31/8 Rev.3. The Delegation noted that the study proposed new

substantive elements in relation to geographical indications and the DNS. The Delegation was of the view that these questions had not been examined before and would thus merit a study. The Delegation of the European Union thanked the Chair for his guidance during the meeting, and thanked the Secretariat for its excellent preparatory work. The Delegation expressed the view that a three-day meeting would have been sufficient to deal with the limited number of substantive items foreseen on the SCT agenda. Finally, the Delegation stated that the experience gained during the previous SCT had set an important precedent in that regard and urged the Secretariat to take the Delegation of the European Union and its member states views into account on the effective use of resources when planning future meetings of this Committee.

19. The Delegation of Belarus on behalf of the countries of the Group of Caucasian, Central Asian and Eastern European Countries (CACEEC), expressed the view that the Committee was one of the key bodies of WIPO. The Delegation added that the work of the Committee had an important economic effect, and therefore its achievements were important and are important indicators of the overall work of WIPO. The Group expressed its satisfaction to see that regional groups were taking an active part in the work of the Committee, and noted that a number of proposals on geographical indications and trademarks had been presented. The Delegation added that it was ready to look at these proposals, and to support the work of the Committee in these areas. The Delegation believed that the work of the Committee would have practical implications, but expressed concerns about the tempo of the DLT projects. The Delegation recalled that at a previous session the Committee was able to make some proposals; it regretted not being able to move forward on the diplomatic conference. The Delegation observed that the current situation meant that the Committee raised new issues and no progress had been made on the initial problems. The Group stated that it would continue to work in a constructive manner and would look at all proposals and drafts. Finally, the Delegation hoped that the Committee would achieve a concrete result, but noted that the work was not any closer to an agreement than a year ago. In this connection the Delegation wished all members of the SCT to be more open so that the DLT does not fall by the wayside. The Delegation hoped that this thirty-third session of the SCT would make significant progress.

20. The Delegation of China thanked the Secretariat for its work in preparing this session, which would allow the Committee to improve and advance in the discussion on the DLT. Furthermore, the Delegation suggested that regarding the outstanding articles, the Committee could probably use some reservation and more flexibility to achieve broader acceptance by Member States. Regarding some other questions and in particular the issue of technical assistance, the Delegation hoped that the concerns of developing countries be fully taken into consideration to allow the Committee to reach a consensus as soon as possible, to improve the SCT work, and to create favorable conditions to convening a diplomatic conference. Finally, the Delegation stated that the issues of protection of country names and geographical indications were very important and the SCT should therefore pay more attention to them.

21. The Delegation of Iran (Islamic Republic of), thanked the Chair for its leadership which enabled the Committee to achieve successful outcomes during this session. The Delegation associated itself with the statement made by the Delegation of Pakistan, on behalf of the Asia-Pacific Group. The Delegation expressed the view that in line with the overall framework of the Organization, the work of the SCT should be in conformity with the development objective of the Organization in other areas, and with the requirement of the Development Agenda. Therefore, in this regard, the Delegation supported the SCT work on the new aspect of the protection of geographical indications as elaborated in the proposal contained in document SCT/31/8 Rev.3. The Delegation stated that geographical indications could be considered as a useful intellectual property tool for developing countries, in its role of supporting development in rural areas, and in its vital role in socioeconomic development of developing countries. The Delegation supported any norm-setting for the existing protection of geographical indications, against misuse and counterfeiting, and especially in the DNS. Regarding the DLT, the

Delegation of Iran (Islamic Republic of) took careful note of progress made in the process of negotiation on the draft text on DLT but underscored that it would be important to establish a balance between costs and benefits. Consequently, the Delegation expressed the view that the DLT should specify modalities for providing technical assistance and capacity building which are important for developing countries. The Delegation stated that, therefore, the Committee should reach a consensus on this before any decision on holding a diplomatic conference. The Delegation was therefore of the view that in line with the Development Agenda Recommendations, it would be necessary to insert an article on technical assistance in the treaty. The Delegation underscored that this practice enjoyed important precedent in international treaties like the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and the Patent Cooperation Treaty (PCT). Regarding the African Group proposal on the inclusion of a disclosure requirement in Article 3 of the draft text, the Delegation had the view that this proposal deserved in depth discussions within the Committee, which could bring added value to DLT negotiations, as well as in other domains. The Delegation stated that the disclosure was an essential tool to maintain balance and benefits for all Intellectual property rights. Regarding the protection of country names, the Delegation supported the collaboration and the idea of developing a joint recommendation in relation to the protection of country names.

22. The Delegation of the Republic of Korea thanked the Chair for his commitment to this important SCT session. The Delegation also thanked the Secretariat for its work, and the Member States for their efforts in furthering discussions on the industrial design law treaty, which had resulted in significant achievements thus far. The Delegation thanked the Delegation of Pakistan, and supported its statement made on behalf of the Asia-Pacific Group. The Delegation recalled that discussions on the DLT were initiated in 2005 to examine methods for providing applicants with quicker, more efficient right-acquisition services while simultaneously simplifying the system worldwide. The Delegation believed that the discussions on the current draft of Articles and Rules had progressed well, thanks to the commitment, cooperation, and endurance shown by Member States. The Delegation stated that the Committee should focus on bringing these long, ongoing discussions to a fruitful conclusion by using this meeting as a platform for facilitating the holding of a diplomatic conference. The Delegation believed that the details of the treaty could be properly resolved at the conference once the necessary preparations were finalized. The Delegation appreciated the Secretariat's efforts in organizing a side-event on the protection of country names and nation branding, which would provide members of the SCT with background knowledge on various issues related to the protection of country names and nation branding. Referring to geographical indications, the Delegation supported the proposal made by the Delegation of United States of America, who had rightfully suggested that any further discussions should be held under the purview of the SCT, in consideration of the fact that the SCT was a standing committee for dealing with geographical indications related matters. The Delegation observed that geographical indications were protected differently from country to country, depending on local circumstance and that the TRIPS Agreement allows each country to pursue autonomous protection of geographical indications in whatever manner they wish. The Delegation expressed the view that a study of existing national geographical indications regimes would add value to the previous work carried out within the SCT. The Delegation therefore believed that it was necessary to carefully review the feasibility of an international geographical indications filing system, while considering the legal and economic impact that such a system would have on all Member States. Moreover, the Delegation stated that the Diplomatic Conference for the Adoption of a new Act of the Lisbon Agreement for the Protection of Origin and Their International Registration falls short of permitting the full participation of all WIPO Member States. The Delegation said that even though the proposal for the Revised New Act goes beyond the revision of procedures and contains substantive core matters, many delegations, outside of the 28 Lisbon Union members lack the necessary influence to affect the Basic Proposal. The Delegation expressed the view that until resolving these limitations, the SCT was the most suitable place to discuss building an international geographical indications filing system, in such a way that it reflects the concerns of

all WIPO Member States. The Delegation of the Republic of Korea stressed the importance of dealing with the DLT and geographical indications issues in an appropriate time and venue, which would allow WIPO Member States to streamline their efforts to bring such matters to a fruitful resolution.

AGENDA ITEM 5: INDUSTRIAL DESIGNS

Industrial Design Law and Practice – Draft Articles and Draft Regulations

23. Discussions were based on documents SCT/33/2 and SCT/33/3.

24. The Delegation of Japan, speaking on behalf of Group B, highlighted the increasing importance of intellectual property protection of industrial designs and the need to avoid further delay of the adoption of the DLT in the interest of users of intellectual property systems. The Delegation said that it regretted that the negotiation on the DLT had been brought backwards at the last session of the SCT with a new proposal on a disclosure requirement. Thanking the African Group for the explanations contained in an informal document, as to the link between traditional knowledge (TK), traditional cultural expressions (TCEs) and genetic resources (GRs) with industrial designs, the Delegation recalled that the DLT aimed at simplifying formalities. The Delegation was of the view that the new proposal by the African Group would complicate procedures and increase the burden for industrial design applicants. Stating that the proposed disclosure requirement was of a substantive nature and therefore not related to the process of filing an application, the Delegation expressed concerns about Article 3(1)(a)(ix) in document SCT/33/2 which, in its view, did not fall within the scope and objective of the DLT and would significantly undermine its purpose. Encouraging the proponents to consider withdrawing their proposal and to focus discussions on the remaining issues in documents SCT/31/2 Rev. and SCT/31/3 Rev., the Delegation indicated that Group B strongly hoped that, at this session, the SCT could draft a recommendation to convene a diplomatic conference to the General Assembly on the basis of those documents.

25. The Delegation of the European Union, speaking on behalf of the European Union and its member states, said that substantive provisions of the DLT were settled and that the question of how best to accommodate provisions on technical assistance in relation to the implementation of the DLT remained to be resolved. The Delegation indicated that it remained open to the idea of including provisions on technical assistance in the main body of the text. Considering that the request by the African Group to include a provision on a disclosure requirement would move the text further away from the objective of simplification and alignment of design registration formalities and was not relevant to industrial design formalities, the Delegation urged the African Group to withdraw its proposal. To avoid the dilution of the text by unrelated matters, the Delegation said that the text should not be re-opened and that the SCT should focus its efforts on the decision to convene a diplomatic conference based upon the stabilized text existing before the session of the SCT of November 2014.

26. The Delegation of Romania, speaking on behalf of the CEBS Group, reiterated the attachment of the CEBS Group to the adoption of the DLT in the nearest possible future. Considering that the text was mature enough to convene a diplomatic conference, the Delegation expressed the hope that all members of the SCT would adopt a constructive approach, abstaining from presenting new proposals. With respect to the proposal made by the African Group at the thirty-second session of the SCT, the Delegation said that it took note of the informal document provided by the African Group, but still considered that the proposed text was not compatible with the DLT purpose to simplify and harmonize industrial design registration formalities. By consequence, it did not support the proposal. Reiterating the CEBS Group flexibility for the inclusion of an article on technical assistance and capacity building for the implementation of the future DLT in the text of the treaty, the Delegation

indicated that it foresaw such discussions at the diplomatic conference itself. The Delegation stated that the SCT should concentrate on the drafting of a recommendation to the General Assembly for the convening of a diplomatic conference.

27. The Delegation of Mexico said that, in its view, the reference to GRs in the proposal by the African Group went beyond the scope of the DLT, as industrial designs exclusively concerned visual and aesthetic characteristics. Pointing out that international norms on formalities should seek to establish a balance between encouraging creation and excessive protection, the Delegation expressed the view that too many requirements would limit the creativity of designers. Consequently, the Delegation invited the African Group to reconsider its proposal.

28. The Delegation of Nigeria, speaking on behalf of the African Group, considered that suspending discussions on a critical and needed topic would be a step backward for the Organization and would sow seeds of discord for the work of the SCT. The Delegation said that the assimilation of many countries in and outside the African Group as equal members of the Organization had presented challenges. However, nowadays, all countries had a responsibility and a duty to protect, stimulate, and ensure that the innovation occurring within their territories received the same protection internationally as nationally. Considering that disclosure was the *quid pro quo* of the intellectual property system, the Delegation underlined the fact that not a single patent or trademark was issued without some disclosure. The Delegation was of the opinion that Article 3(1)(a) contained some disclosure requirements of administrative nature and others of substantive nature and pointed out that, since that provision already required different kinds of disclosure, Article 3(1)(a)(ix), reflecting the proposal by the African Group, appropriately belonged there. The Delegation believed that contracting parties should be able to require disclosure where genetic resources were used in the physical embodiment of an industrial design and provided examples of situations where this would be the case. The Delegation added that Article 3(1)(a)(ix) concerned a requirement for those countries that already provided for such disclosure in their national design law, to enable them to require an applicant to disclose the source and the origin of the TK, TCEs or GRs reflected in the physical embodiment of the industrial design. In the Delegation's view, this was the cornerstone of the design protection system. Observing that a design based on a TK or TCEs foreclosed the market for an indigenous innovator, the Delegation noted that no delegation was interested in foreclosing the industrial design regime to indigenous innovators or believed that indigenous innovation had no place in the intellectual property system. Under the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, Intellectual Property Offices of ARIPO member states already required the confirmation that a protected design did not make use of TK, TCEs or GRs, so that not maintaining Article 3(1)(a)(ix) in the DLT would imply, for these States, to change their standards and rules. Referring to Article 23 of document SCT/33/2, the Delegation recalled that, in the case of conflict between the provisions of the treaty and those of the regulations, the language of Article 3 should prevail and, in its view, that was a problem. The Delegation said that the aim of the proposal was not to oblige SCT members to require applicants to disclose the source of the TK, TCEs or GRs incorporated in the physical embodiment of a design, but to permit countries that wanted to know whether a design was based on a pre-existing product covered by TK, TCEs or GRs to require the disclosure. The Delegation considered that the African Group had identified a gap in the proposed DLT, since the latter did not take into account existing laws governing designs in different parts of the world and foreclose the possibility for member to have a disclosure requirement in their laws. Recalling that Article 3(2) of document SCT/33/2 stated that no indication or element, other than those referred to in Article 3(1) and in Article 10, could be required in respect of an application, the Delegation pointed out that, for the African Group, the disclosure requirement was consistent with the premise of the intellectual property system, the recognition of design protection around the world, free and fair competition and other substantive requirements under Article 3, as well as with obligations that already existed in some member states.

29. The Delegation of Pakistan, on behalf of ASPAC, expressed its strong support for the proposal by the African Group, considering that the proposal provided safeguards for national policy priorities and promoted creativity and innovation.

30. The Delegation of Greece, indicating that it did not see any gap in the DLT, stated that, although disclosures could be fundamental in intellectual property, the disclosure requirement proposed by the African Group was a substantive rather than a formality requirement. As a formality treaty, the DLT aimed at harmonizing the maximum contents of an application, not the requirements for protection. Pointing out that the material out of which a product was made was not qualified for design protection, the Delegation concluded that it did not support the proposal of the African Group.

31. The Delegation of Nigeria pointed out that, in the examples it had given, the ornamentation of the design resulted from the material used. Considering that the distinction between administrative and substantive requirements was rhetorical and that Article 3 already contained substantive requirements, the Delegation stated that the proposal of the African Group was not aimed at protecting TK, TCEs or GRs, but at allowing countries that so required to ask the applicant whether the design was the result of a TK, TCE or GR.

32. The Delegation of Cuba said that, in its view, the proposal was pertinent.

33. The Delegation of the United States of America, thanking the Delegation of Nigeria for its informal document and associated explanations, indicated that it had not yet been able to fully consider them. The Delegation said that the question as to whether the DLT had substantive implications was not a relevant question, since the aim of the DLT was to streamline and harmonize filing procedures for industrial designs. Recalling that all the provisions of the draft Articles and draft Regulations had been modelled on two well-established formalities treaties - namely the Patent Law Treaty (PLT) and the Singapore Treaty on the Law of Trademarks (STLT) – the Delegation stressed that both the PLT and the STLT provided guidance to the SCT concerning filing procedures formalities as, in certain jurisdictions, industrial designs were subject to a substantive examination system similar to the patent system and, in other jurisdictions, they were subject to a registration system similar to the trademark system. Considering that the DLT had been drafted in the form and spirit of the PLT and the STLT, the Delegation stated that it disagreed with any suggestion that the DLT was a substantive treaty. As to the disclosure requirement proposed by the African Group, the Delegation believed that the DLT should not include such a substantive provision, as the required information was not germane to the ornamental appearance protected by industrial design systems and was not needed to understand the design or to decide whether it should be registered or patented. The Delegation further observed that the material of a product, such as bottles from plants or naturally wrapped yogurt cups, as well as the presence of TK in processes used to create attractive products developed by local communities or indigenous groups, had nothing to do with the ornamental appearance. Methods or processes could be protected by utility patents, not by design patents. Industrial design registration would thus not prevent anyone from using the material, as biological or chemical compounds were by definition not eligible for design protection. Recognizing the relevance of prior art to the examination of a design, whether the prior art was a TCE or a design created the year before, the Delegation pointed out that the draft Regulations allowed contracting parties to require information that could have an effect on the eligibility for registration of the industrial design. However, it did not allow to require information not needed, such as information about the making of a design, the materials used or the country of origin of the prior art. Considering that the disclosure requirement proposed by the African Group had no relevance to the DLT or to industrial designs generally, the Delegation was of the view that the underlying concerns of the African Group would already be accounted for in the DLT which provided and permitted flexibilities to effectively prevent designs that were not new from being granted protection. The Delegation indicated that, in its country, a design applicant had a duty to provide prior art references they

were aware of to the USPTO. If an applicant knew that his/her design was not novel, the patent could be held unenforceable when the applicant would try to enforce it. Considering that this requirement was consistent with the objectives of the DLT, the Delegation believed that document SCT/31/2 Rev. and SCT/31/3 Rev. permitted flexibilities which could be at the root of the proposal by the African Group.

34. The Delegation of Mozambique stated that, in its view, the underlying concerns of the African Group were not accounted for in Rule 2(1)(x) of the draft Regulations. The Delegation argued that, if the proposed disclosure requirement was considered as a substantive requirement not belonging in the DLT, it would not be allowed under that provision. Moreover, taking into account the prevailing nature of the provisions of the treaty over the regulations in case of conflict, the Delegation stated that the African Group wished to have explicit language in Article 3 clarifying that countries were allowed to require disclosure of origin. The Delegation said that, while the disclosure of origin of TK, TCEs, GRs could help with novelty determinations, that was not the only reason why a country would require that information. Referring to the Swakopmund Protocol, the Delegation indicated that, although the use of only a portion of a TK or TCE in a design could not affect its eligibility for registration, a country could still want to know whether that TCE or TK had been properly accessed and used. Consequently, in its opinion, Rule 2 insufficiently responded to the policy space needed by countries with laws requiring the disclosure of origin of TK, TCEs and GRs.

35. The Delegation of Nigeria concurred with the view that a design resulting from a TK, a TCE or a GR in its physical ornamentation was not novel, and stated that all members of the SCT could agree that a design should not be issued when there was prior art. However, the Delegation pointed out that, in some jurisdictions, the system was merely a registration system and there was no opportunity to talk about prior art. Referring to Note 3.01 of document SCT/33/2, which stated that “this Article and the corresponding rules of the regulations proposed a closed list of indications”, the Delegation said that, in its opinion, countries could not add elements to Article 3, not even through the rules. The Delegation therefore wondered what would happen to countries that already had a disclosure requirement for designs in their national law. The Delegation further underscored the consistency of the proposal of the African Group with the interests of innovation, enhancing predictability for applicants and allowing policy space. Finally, the Delegation indicated that the African Group was committed to the DLT and believed in it. In its view, a disclosure requirement was related to novelty and was fundamental to the nature of protection for industrial designs.

36. The Delegation of the United States of America, pointing out that registration systems provided for means to challenge design rights in case of prior art references, observed that the DLT took into account the different industrial design systems. Considering that novelty was a focused analysis going beyond mere inspiration, the Delegation said that inspiration as such would not prevent the eligibility for protection in the industrial design system. Consequently, the Delegation considered that what was relevant was the existence of a prior art, rather than its origin.

37. The Delegation of Nigeria pointed out that the disclosure requirement in the DLT did not aim at protecting TK, TCEs and GRs, but at signaling information to the examiner that could affect the novelty or originality of the design. The Delegation explained that, under Article 19(3)(c) of the Swakopmund Protocol, member states of ARIPO were required to ensure protection against misleading indications, endorsement or linkages with a community from where the TK or the TCE came. Observing that, in some jurisdictions, designs were also protected by trademarks, trade dress or product configuration, the Delegation said that source identification was critical in those systems. Finally, the Delegation wondered whether the term “patents” in Article 2(2) of the draft Articles referred only to “design patents”, or also to “utility patents”.

38. The Delegation of Mozambique stated that, while the origin of prior art could be irrelevant in certain countries, it could be relevant in other countries. Referring to Article 19(3) of the Swakopmund Protocol, the Delegation said that the origin of prior art was relevant where there was a concern to ensure that the TK, TCE or GR had been accessed correctly. Consequently, the Delegation reiterated the importance of leaving policy space for national laws to require the disclosure of the origin.

39. The Delegation of Japan, on behalf of Group B, expressed the view that the purpose of the proposal of the African Group could be achieved without a new proposal, since Rule 2(1)(x) could cover the information requested by the African Group. Such information could be required even in countries which did not have an examination system if the information could have an impact on the eligibility for registration of the industrial design. For this reason, the Delegation invited the African Group to reconsider its proposal and focus on the remaining issues.

40. The Delegation of the Republic of Korea, considering that the proposal by the African Group dealt with a substantive requirement rather than a formality, expressed the view that such proposal would create a burden for applicants. As the objective of the DLT was the simplification of filing procedures, the Delegation said that it did not support the African Group's proposal. Pointing out that the law in the Republic of Korea did not contain a provision concerning TK, TCEs or GRs, the Delegation wondered why the DLT should especially deal with TK, TCEs or GRs since, in its opinion, all designs already registered, as well as other pictures or shapes, should be considered to determine the validity of a design registration.

41. The Delegation of Nigeria stressed that the proposal of the African Group did not impose a disclosure requirement to all countries, but aimed to allow countries which believed in its importance and relevance to keep their law or to add this requirement in their law. The intention of the proposal was to simplify the work of the examiner by providing important information. Insofar as Group B considered that the proposed disclosure requirement could be covered by Rule 2(1)(x), the Delegation suggested working the language in that Rule, so as to clarify that the disclosure requirement was part of the information referred to in the Rule.

42. The Delegation of Japan, reiterating the view that the current language of Rule 2(1)(x) could encompass the relevant information within the purpose of the DLT, stated that Group B did not see the necessity to adapt the language of that Rule to elements beyond the information relevant to the eligibility for registration.

43. The Delegation of the United States of America said that, in its view, the proposal of the African Group, as reflected in Article 3, covered a broad area of indications or elements, while Rule 2 covered a small section of those. In its opinion, elements beyond the purpose of the DLT and the formalities approach would be burdensome for applicants and undermine the DLT.

44. The Delegation of Nigeria requested clarification as to whether the disclosure requirement proposed by the African Group as part of the closed list under Article 3 would be encompassed by Rule 2(1)(x).

45. The Delegation of Japan replied that the criteria in Rule 2(1)(x) was the impact on the eligibility for registration.

46. The Delegation of the European Union, on behalf of the European Union and its member states, reiterated that it did not support the proposal by the African Group. The Delegation, indicating that it needed time to take stock of the situation, suggested suspending the discussions.

47. The Delegation of Nigeria said that, while it appreciated that SCT members had not had enough time to consider the informal document circulated before this SCT session and needed to take stock of the situation, the African Group was ready to discuss further and continue to share ideas, so as to reach a common understanding.

48. The Delegation of Nigeria, on behalf of the African Group, said that technical assistance and capacity building were important components of WIPO's work and would be necessary for all countries, not just developing countries and LDCs.

49. The Delegation of the United States of America, pointing out that no delegation had opposed the consideration of technical assistance in relation to the DLT, observed that the United States of America were a frequent provider of technical assistance. Expressing the view that technical assistance in relation to the DLT could be properly handled through a resolution, the Delegation underscored the fact that, in the past, technical assistance had been a matter addressed at the diplomatic conference itself. Therefore, the Delegation objected to agreeing on an article on technical assistance as a pre-condition to convene a diplomatic conference. In the Delegation's opinion, once the remainder of the DLT would have been agreed upon during the diplomatic conference, SCT members would be able to take the appropriate decision on technical assistance.

50. The Delegation of Canada, endorsing the statement by the Delegation of the United States of America, said that it remained confident that a diplomatic conference resolution on technical assistance would provide sufficiently clear political commitment regarding the provision of technical assistance and capacity building in the context of the DLT. While it could support the negotiation of an article on technical assistance at a diplomatic conference, the Delegation informed that it could not do so as a pre-condition to convene a diplomatic conference.

51. The Delegation of the European Union, on behalf of the European Union and its member states, reiterated its flexibility as to the form under which technical assistance would be provided, either through an article or through a standalone resolution.

52. The Delegation of China, stressing the importance of technical assistance and capacity building, considered that it could improve the implementation of the DLT and would benefit all parties. Although it believed that the adoption of an article would be the better choice, the Delegation indicated that it supported the flexibility of all parties.

53. The Delegation of Nigeria, on behalf of the African Group, suggested holding informal consultations on the two issues contemplated at this session of the SCT.

54. The Delegation of the European Union, on behalf of the European Union and its member states, stated that, while it shared the desire of the Delegation of Nigeria and the Chair to move the work of the SCT forward, it did not believe that informal consultations were appropriate at this stage, given the different level of maturity of the discussions on both issues. While the maturity on the issue of technical assistance was very advanced, discussions on the issue of a disclosure requirement were at a start.

55. The Delegation of Japan, on behalf of Group B, indicating that it also shared the desire to move forward the discussions, said that it did not believe that informal consultations would be convenient to advance, taking into account the different maturity of the issues and for transparency reasons.

56. The Delegation of the United Kingdom said that it saw merit in re-opening discussions on Article 22/Resolution only if there were new developments. In its opinion, this was not the case. Recalling that a lot of time had been spent on discussions, the Delegation pointed out that the

remaining issues could be resolved at a diplomatic conference. Thanking the African Group for the explanations provided in the informal document, the Delegation indicated that it was still analyzing it, so that it would be difficult to provide concrete comments to move forward. For this reason, the Delegation was not in favor of holding informal consultations on both issues.

57. The Delegation of Romania, on behalf of the CEBS Group, declared that it was in favor of formal discussions in the plenary, so as to record explanations which would be useful.

58. The Delegations of Côte d'Ivoire, Djibouti, Egypt, Indonesia, Kenya, Pakistan, in its national capacity, Peru, South Africa and Sudan expressed their support for the holding of informal consultations.

59. The Delegations of Denmark, Germany, Greece, Latvia and Poland, aligning themselves with the statements by the Delegation of the European Union and Group B, declared that they were not in favor of holding informal discussions.

60. The Delegations of France and Sweden indicated that they did not favor informal discussions and expressed their preference for discussions in the plenary.

61. The Delegation of Iran (Republic Islamic of) supported the proposal by the African Group and considered that it was a normal practice of the SCT to try to remove divergences through informal consultations.

62. The Delegation of Nigeria, expressing its support for the request for informal discussions by the African Group, indicated that it was available for engagement. Observing that the African Group did not have all the answers on how to move forward, the Delegation invited all SCT members to engage in the process of road building, so as to get ahead to a successful diplomatic conference.

63. The Delegation of Uruguay, observing that numerous SCT members did not wish to hold informal consultations, indicated that it did not have any preference. However, so as to avoid wasting time, the Delegation suggested discussing other pending items on the agenda.

64. The Delegations of Chile, the European Union, the United Kingdom and the United States of America, associated themselves with the statement by the Delegation of Uruguay to move forward to other agenda items.

65. After the lunch break, the Delegation of the European Union, on behalf of the European Union and its member states, reported that informal lunch-time discussions with the African Group and other interested parties, had been held in an excellent atmosphere of transparency and openness. The good dialogue had helped understand the respective positions of delegations. The Delegation announced that it hoped to continue the discussions in the run-up of the thirty-fourth session of the SCT.

66. The Delegation of Nigeria, speaking on behalf of the African Group, concurred with the statement made by the Delegation of the European Union. The Delegation reported that, while the discussions had been productive, the issues had nevertheless not been solved. The Delegation announced that the African Group was ready to engage in discussions with the Delegation of the European Union and other delegations. With respect to technical assistance, the Delegation said that it regretted that the issue had not been discussed and that the texts with the square brackets could be taken to a diplomatic conference, if its convening was agreed.

67. The Delegation of Indonesia, welcoming the outcome of the lunch-time discussions, expressed its intention to be involved in the negotiations and reserved its right to express its opinion and comments.

68. The Delegation of the United States of America, referring to the lunch-time discussions and the comments and concerns raised in the plenary, wondered whether the African Group would take these comments under consideration and have a second look at its proposal for the next session of the SCT. In its view, that could help to hold further discussions at the next session of the SCT.

69. The Delegation of Nigeria said that, as the African Group was not *demandeur* of the treaty, it would welcome any proposal to accommodate its interests.

70. The Delegation of United States of America, observing that the concept of *demandeur* of the treaty was not the best way to characterize the situation, indicated that the United States of America would support the DLT to the extent that it created a good treaty, which furthered the intellectual property system and was positive for applicants in all countries. However, if the treaty did not serve that purpose, the United States of America would not support it.

71. The Delegation of Nigeria reiterated that it was ready to discuss and would welcome any proposal from any SCT member.

72. The Chair noted that delegations held useful discussions on the proposal presented by the African Group at the thirty-second session of the SCT. He concluded that, overall, the situation remained unchanged and that the DLT would be considered at the next sessions of the General Assembly and the SCT.

AGENDA ITEM 6: TRADEMARKS

Update on Trademark-Related Aspects of the Domain Name System

73. Discussion was based on document SCT/33/4 Rev.

74. The Delegation of Hungary thanked the Secretariat for the update contained in the document. Given the important relationship between gTLDs and intellectual property rights, it believed that an update for future sessions of the SCT would be useful and asked that this item be kept on the agenda. Mentioning document SCT/34/4 Rev., the Delegation requested more details concerning the revision of the UDRP.

75. The Secretariat explained that according to internal ICANN rules, ICANN was to undertake a review of instruments it had adopted, such as the UDRP, on a time-bound basis. In light of the introduction of new gTLDs in the DNS two years ago, it had been decided to postpone to the current time the then-scheduled UDRP review, in order to avoid destabilizing this existing rights protection mechanism. ICANN's Secretariat would submit an inventory paper as a basis for the review. The WIPO Secretariat would monitor developments.

76. The Delegation of Italy associated itself with the Delegation of Hungary in requesting future updates of the document for the SCT.

77. The Representative of ICANN said that the gTLD Program was ongoing and that although around 500 new extensions were currently in the root of the Internet, that number was expected to increase in the following six to nine months. He clarified that the review mentioned earlier would, in addition to the UDRP, review all other rights protection mechanisms at ICANN, including for example the Trademark Clearinghouse. The Representative stated that the positions of the SCT delegates and represented associations were important for the review, as were the views expressed in ICANN's Governmental Advisory Committee.

78. The SCT considered document SCT/33/4 Rev. and the Secretariat was requested to keep Member States informed of future developments in the DNS.

Revised Proposal by the Delegation of Jamaica

79. Discussion was based on documents SCT/32/2, SCT/29/5 Rev., SCT/31/5 and SCT/30/4.

80. The Delegation of Jamaica declared that the side-event on nation branding helpfully explained the widespread use and importance of nation branding to both developed and developing countries. The event had also highlighted the need for greater international protection of country names than the current trademark practice generally offered. The Delegation recalled that in 2009 Jamaica had called for an amendment of Article 6ter of the Paris Convention to improve the protection of country names, in a manner similar to other important symbols of statehood, such as flags and armorial bearings. However, the time was not opportune for the amendment of Article 6ter or for any binding international instrument on that matter. Recognizing this situation and desirous of facilitating the most constructive and realistic approach, the Delegation had consulted very broadly on this issue. The outcome of those consultations and of the discussions held in the Committee was the decision taken during the twenty-seventh session that requested the Secretariat to prepare a study in accordance with the terms of reference contained in the annex to document SCT/27/10. The Delegation took the time to conduct a detailed analysis of document SCT/29/5, which in its view confirmed that, although protection was available for country names through several alternative means, such protection was often limited to particular circumstances, leaving ample opportunity for persons and entities to nevertheless abuse and unfairly free ride on the good will and reputation of a country's name. That conclusion was clearly supported by the panelists of the side-event. Indeed, the current international protection for country names was not comprehensive but actually inadequate. This was especially evident when comparing the level of protection granted to national flags, armorial bearings and official symbols of States and the names and symbols of international intergovernmental organizations. In the study, nearly all of the responding countries had indicated that under the applicable legislation, names of States were excluded from registration as trademarks only if they were considered as descriptive of the origin of the goods in respect of which registration was sought. This was the most commonly used ground against which the basis for registration of country names as trademarks was checked. However, differentiation was not made between marks which consisted exclusively of a country name and those which included additional words and/or figurative elements. Therefore, if a country name was combined with elements that were found distinctive, the trademark was often accepted for registration. The results of the study thus confirmed the need for stronger, more comprehensive and internationally consistent protection of country names. That issue continued to be of paramount importance to Jamaica, as a matter of trade and development. As a small, vulnerable, highly indebted middle-income country whose firms were micro, small and medium sized enterprises by international standards, Jamaica had been challenged with finding effective ways to enter global commerce where branding and marketing were the lifeblood of sales and growth. Although national enterprises valiantly tried to go global with limited resources, they could not really compete through their own marketing efforts. For that reason, developing countries with particular limitations and vulnerabilities had for many decades relied on nation branding to leverage their weaker and more vulnerable producers through strong national branding campaigns. The Delegation considered that the capacity of large enterprises, especially in developed countries, to brand and market their own goods and services made the use of nation branding less critical for them. Indeed, some product brands in such countries were far stronger and more recognized than some countries and their country brand, which was generally the case for small developing countries. Any measure that would strengthen the ability of SMEs in small developing countries to enter and participate effectively in global commerce could make a significant impact on the prospects of these weaker firms as well as on their country's development agenda, as they could benefit from the recognition and market appeal

provided by a collectively managed and well promoted nation brand. The Delegation stressed that effective and adequate protection of country names was fundamental to the strength, sustainability and success of any nation brand. The initiative on country names protection would ultimately allow countries to be better able to design and implement national marketing strategies to support their enterprises in global markets. As stated in the past two sessions of the SCT, the aim of the proposed draft Joint Recommendation was not to impose compulsory rules for intellectual property offices nor to create additional obligations, but to establish a coherent and consistent framework to guide those offices, other competent authorities and international traders in the use of trademarks, domain names and business identifiers which consisted of or contained country names. The Delegation indicated that Jamaica was willing to work with each and every Member State and the Secretariat to develop a Joint Recommendation of the Paris Union and WIPO Assemblies in relation to the protection of country names that would meet the consensus of the entire membership. It thanked the Member States, which for more than half a decade had supported these important discussions on the protection of country names and looked forward to continued focused discussions as well as progress within the SCT.

81. The Delegation of Trinidad and Tobago endorsed the statement made by the Delegation of Jamaica. As a developing country coming from the same region, Trinidad and Tobago also faced challenges with respect to the protection of country names. The Delegation recognized that the proposed draft did not prescribe binding rules but rather international standards harmonizing the treatment of registrations including country names, as guidance to intellectual property offices. Trinidad and Tobago aligned itself with the Delegation of Jamaica and called for further study of this matter by the Standing Committee.

82. The Delegation of the European Union, on behalf of the European Union and its member states, recalled that the existing trademark laws already provided a solid level of protection to country names as it was highlighted in the study conducted by the Secretariat and contained in document SCT/29/5 Rev. From the European trademark law perspective, the proposed Joint Recommendation posed some difficulties as it established a very broad protection for country names, which would impose an interpretation of the grounds for refusal under Article 7 of the Community Trademark Regulation against established practice and case law. For instance, as regarded descriptiveness, revised Article 3 concerning conflicting marks indicated that irrespective of the goods and services for which a mark was used, was the subject of an application for registration or was registered, that mark would be deemed to be in conflict with a country name where the mark or a part thereof consists of or contains a country name and the mark was being used or intended to be used in relation to goods or services which do not originate in the country indicated by the country name. This Article contradicted European case law as mentioned in paragraph 25 of the Study on the protection of country names, which stated that situations should be judged on a case-by-case basis. A principle which precluded the registration of geographical names did not exist under European law. In addition, the Delegation believed that it was necessary to look at the issue from all perspectives, not just from the point of view of States and consumers but also from the point of view of the current users of country names in trademarks who might legitimately use those names and whose trademarks had become well-known and recognized in the market place. The latter could prevent upsetting legitimately held business practices. Awareness-raising activities could be usefully undertaken to publicize the available mechanisms for the refusal or invalidation of trademarks containing country names. The European Union and its member states looked forward to participating constructively in future discussions on this topic.

83. The Delegation of Romania, on behalf of the CEBS declared that it would be useful to carefully examine the potential consequences of the protection of country names for all stakeholders. The Delegation hoped that once the results of such an examination would be

available, the SCT would be in a better position to decide whether or not it needed to complement the current mechanisms for refusal or invalidation of trademarks containing country names.

84. The Delegation of Cuba supported the proposal made by the Delegation of Jamaica and added that there was currently no international solution concerning the use and registration of country names as trademarks. The Delegation supported the continuation of the discussions in the SCT with a view to concluding a Joint Recommendation, which would be a very useful instrument for Member States when considering trademark applications consisting of or containing country names.

85. The Delegation of Guatemala considered that the proposal made by the Delegation of Jamaica was very interesting and supported the continuation of the debates in the SCT on this matter.

86. The Delegation of Monaco indicated that for more than 15 years national authorities had endeavored to protect the names Monaco and Monte Carlo throughout the world. The Delegation noted that the protection of country names was neither uniform nor exhaustive; it required important human resources and involved significant financial costs. Such endeavors did not however safeguard the image and reputation of a country, neither in the interests of economic stakeholders nor in the interest of consumers. The side-event on nation branding had confirmed the complexity of the problem and the diversity of the solutions applied. Consequently, the Delegation supported the proposal by the Delegation of Jamaica to harmonize practices in this area. In any event, the item should remain on the Agenda of the SCT.

87. The Delegation of Italy aligned itself with the statement made by the European Union and reaffirmed the importance that it attached to the topic. Adopting a Joint Recommendation would represent the outcome of the work of the SCT. Italy had a strong interest in the protection of country names against acts of unfair competition and deceptiveness. There had been repeated cases of Italian-sounding trademarks that took undue advantage of the reputation of Italian food, design and fashion products. The revised draft Joint Recommendation appeared to be clearer and more streamlined than the previous text. As it had been pointed out by the Delegation of the European Union, problematic aspects still remained and they would have to be properly considered. The Delegation however believed that agreement could be reached on a solid and balanced instrument, which was at the same time effective in promoting the protection of country names and easy to be used by Member States and by their national authorities, while it took into account legitimate business prospects. The Delegation stressed the importance of an instrument that would focus on and provide protection in instances where the use of country names was misleading, deceptive, false or generic. The Delegation looked forward to participating constructively in future discussions of this topic.

88. The Delegation of Spain supported the statement made by the Delegation of the European Union. The Delegation believed that country names were currently well protected in European and national legislations. A detailed study of country names was however necessary, not only from the point of view of States and consumers but also from the perspective of current users of country names in trademarks resulting from legitimate commercial practices. Work on this issue should continue, taking into account the views of all interested parties.

89. The Delegation of the United States of America said that the side-event on nation branding had been very useful in the context of the SCT discussions on country names. The Delegation considered that a statement made by a panelist of the side-event seemed to suggest that governments could easily be granted exclusive rights over the name of their country, which could then be licensed to nationals of the State or of other countries whenever it was considered useful. The Delegation expressed concern about that statement, which in its view,

mirrored the idea of the proposal by the Delegation of Jamaica of a presumption of deceptive use for any trademark application concerning a country name for goods or services not originating in that country. Although the draft proposal provided for situations in which the applicant could rebut that presumption, this presumed an ownership right that did not exist. Referring to the mention made of the protection under Article 6^{ter} of the Paris Convention, the Delegation said that the absolute protection granted to States flags and coats of arms as symbols of sovereignty implied that those emblems should be kept out of the commercial stream, even by governments. Therefore, the protection for flags should not be compared with country names, which had been in the public domain for decades. Taking them out of the public domain at this point would be problematic. In addition, the issue touched on the complex question of rules of origin, about which the Delegation stood ready to discuss, but it was premature to launch any text negotiations on a Joint Recommendation before such discussions had taken place in the SCT.

90. The Delegation of South Africa confirmed that it remained committed to continue discussions on this topic in the SCT. However, the Delegation did not support the notion that the outcome of such discussions should be a Joint Recommendation.

91. The Delegation of Switzerland expressed the view that country names were increasingly used in advertising as they were not only important from an economic point of view, but they also transmitted values and attributes of a country and of its reputation. As it had been shown in the side-event and also in document SCT/29/5 Rev., national provisions did not provide a clear response in cases of use of country names, and levels of protection differed considerably from one State to another. For all these reasons, the Delegation considered that non-binding international guidelines would shed more light and provide greater legal security to those countries wishing to use them. Therefore, the provisions contained in the revised proposal by the Delegation of Jamaica should be discussed further. The Delegation was convinced that on this subject, the SCT could make a great contribution to the Intellectual Property system, its users and consumers.

92. The Delegation of China said that it was ready to continue studying the protection of country names but it was concerned about the proposed scope of the protection. The Delegation wondered whether the same level of protection should be granted to country names, their pronunciation or country codes.

93. The Delegation of Japan believed that country names were generally used as geographical names in the course of trade, for example in order to indicate the place of production. From that perspective, the proposed Joint Recommendation might impose an excessive burden to trademark applicants, and restrict the use of existing trademarks. Such excessive limitations of the use of trademarks might produce adverse effects on the economic activity of companies. The Delegation considered that discussion should be undertaken in a careful manner and taking account all of those aspects.

94. The Delegation of Iran (Islamic Republic of) declared that it attached great importance to the issue of the protection of country names and therefore supported the adoption of a Joint Recommendation to harmonize practices in that respect.

95. The Delegation of Jamaica recalled that during the previous session of the SCT, many delegations had supported the call for beginning discussions on the revised draft Joint Recommendation contained in document SCT/32/2, while other delegations raised questions regarding the relevance of the proposal. One of those delegations had asked for replies to several questions before they could undertake any further work on the Joint Recommendation. In an effort to move the discussions forward, the Delegation of Jamaica is prepared to provide responses to the concerns expressed in those interventions. At the thirty-second session, the Delegation of the United States of America had stated that regulating country names on the

basis of any principle beyond consumer deception would potentially conflict with labeling requirements administered by domestic and international agencies. While understanding the role of domestic and international agencies responsible for labeling, the Delegation of Jamaica believed that regulating country names beyond the principle of consumer deception would not conflict but actually complement labeling requirements administered by those agencies. The role of such agencies was to ensure that consumers were provided with accurate and relevant product information, which role would not conflict with the requirements of intellectual property offices. While intellectual property Office practice in the examination of trademarks that included or consisted exclusively of country names varied, most offices required trademark distinctiveness and would normally refuse marks that were considered descriptive, misleading or deceptive. The proposed protection for country names would encourage the competent national authorities to reject those marks that consisted exclusively or partially of a country name and might be deemed misleading or deceptive if the goods or services did not originate in the named country. The proposed draft Joint Recommendation seeks to encourage consensus on the question that the determination of misleading and/or deceptive character of country names should be considered on the basis of the country of origin of the goods and/or services. Therefore, the protection of country names would support and complement the role of domestic and international agencies regarding labeling, as their roles and responsibilities were not antithetical to that of the offices. The Delegation of the United States of America had also said that rules of origin for labeling goods were administered at the national and international level for varying policy purposes and that the proposal could have significant negative trade implications. The Delegation of Jamaica, however, sees the proposed protection of country names as a benefit to all member countries and consumers. The fact that consumers all over the world had been exposed to products bearing a country name that did not originate in the country did more harm than good to the country whose name was used. The use of a country name in a deceptive or misleading manner might have severe negative impact on the economic viability of several industries and sectors within the country in question, as the country and its producers would be competing with other persons or entities outside the country that were using the country name falsely. This would take unfair advantage of the good-will and reputation of the country to the competitive disadvantage of those who often labored to build and maintain the good will and reputation of the country. The Delegation considered that such activities had negative trade implications. The presentation made during the side-event by the President of the Jamaica Exporters Association had highlighted several examples of these types of activities. The protection of country names against misleading or deceptive use based on country of origin would therefore have the positive effect of promoting fair trade, which was one of the fundamental goals of the international trading system. The Delegation of the United States of America also raised concerns regarding Articles 2 to 7 of the draft Joint Recommendation concerning what it called a presumption of deception. In its view, consumers were unlikely to be familiar with every country name and its variations; hence a presumption of deception was a difficult premise on which to base the proposal. The Delegation of Jamaica clarified that Articles 2 to 7 were not based on such a presumption. While consumers might not be familiar with every country name, the issue was not remembering every country name and variations but making available provisions or the interpretation of existing provisions so that country names could be protected adequately without deception. The concern, therefore, should not be the knowledge of consumers of all country names and their variations but to create a system encouraging Member States to protect country names and allowing them to register their own country names and nation brands as trademarks, domain names and/or business identifiers in order to avoid deception. The Delegation was of the view that country names were far more recognizable internationally than national flags, symbols and emblems. Country names should therefore benefit from a similar level of protection to that afforded through the Paris Convention. The Delegation of the United States of America had also considered that the determination of interested parties before a tribunal or a court (Article 3 of the draft Joint Recommendation) seemed to create a public interest or property right in the country name and other identifiers owned by the government, which might not exist under national law. Whilst national laws might not permit or create specific provisions providing for ownership of country names by

governments, the country's name should be reserved for use in relation to goods produced or services originating in the country. To that end, Jamaica seeks similar protection for the country name as for national flags, symbols and emblems. This would both permit the legitimate trade of goods and services from a country and the general use of the country name, which would benefit consumers by ensuring access to goods and services that actually came from the country concerned. The Delegation explained that as States might not be able to nor want to seek protection for their country name, the draft Joint Recommendation would not require States to do so. It would only assist the States, which could and wish to do so. States would therefore remain free not to use that option. During the previous session of the SCT, the Delegations of Norway and the United States of America had said that they did not support State ownership of country names. The Delegation of Jamaica replied that while the proposed Joint Recommendation encouraged the recognition of ownership and control of a country name by a State or government – which was not inconsistent with international law – that was not an obligation for countries. If a State did not claim nor seek recognition of ownership and control over its country name, it remained free to decide so. However, States which claimed ownership and control of their country name and desired its protection should be allowed to do that. Like trademark users, States had rights and legitimate interests in their flags, emblems, symbols and country name to guarantee and differentiate origin. The principal premise of the draft Joint Recommendation was that a country name should be reserved and used exclusively in relation to goods and services originating in that country. Country name protection benefited the persons and entities that traded goods and services from the named country and the only way to ensure this was to recognize the right of States to own and control the country's name for the benefit of those persons who were entitled to use it legitimately in accordance with national law. State ownership of the country's name would allow States to remedy instances of misleading, deceptive or false use of the country's name for the benefit of legitimate traders of goods and services from the named country. The Delegation of Norway had also said that Jamaica's concerns regarding the lack of country name protection were already addressed by the possibility to refuse or invalidate trademark registration, as shown in the Study. However, existing trademark practices regarding examination of marks containing a country name was limited or inconsistent as it was limited to particular circumstances, for instance where the country name was the sole element of the mark. Although the Study showed that 95 per cent of the responding countries would refuse a trademark consisting of or containing a country name if the mark was considered descriptive, if the country name was combined with additional words or elements that were found distinctive, the trademark would nevertheless be accepted for registration. Similarly, although the Study showed that 98.5 per cent of countries would refuse a trademark if it was considered misleading as to geographical origin, where the country name had a secondary non-geographical meaning, the mark might nevertheless be accepted. One presentation made during the side-event highlighted numerous instances where in Europe, trademarks comprising or containing a country name had been registered although the applicant had no association with the country concerned because the trademark contained an additional figurative element. It also presented several cases of trademarks comprising or containing a country name that had been refused for being descriptive or non-distinctive, including the refusal of an application from Monaco to have its own country name registered. Clearly, the determination of descriptive and misleading character was not effective to protect country names even when States made valiant efforts to do so through positive protection via registration. The Delegation of Norway had also expressed the view that use of country names in trademarks was unproblematic as long as it did not monopolize country names or mislead the public as to the origin of the goods or services. While the case presented by the Jamaica Exporters Association might not show monopolization of the country's name, that name was used widely on goods and services without regulation or guidelines and without any connection to Jamaica being proven. Such practices could and did often lead the consumers to be misled and they also lead to misappropriation, unauthorized exploitation, passing-off, dilution and unfair competition with respect to the country's name and goods and services which came from the named country. The proposed draft Joint Recommendation sought to encourage consensus as to the determination of misleading and/or deceptive use when considered by offices and the

competent authorities and to encourage a country of origin approach concerning such determinations, thereby engendering greater protection of country names internationally. The Delegation of Norway had also stated that the adoption of a norm would impose unnecessary burdens on users who needed a flexible system in their marketing strategies. The Delegation of Jamaica considered that any burden on individual users outside of the named country imposed by reasonable regulation and guidelines should be weighed against the undue burdens (financial or others) placed on legitimate individuals, business interests and nations at large as a result of unregulated, free-for-all use of country names by all. The need for flexibility in marketing should not outweigh the need for protection of legitimate traders based in a country and for protection of legitimate brands for goods and services that came from the named country. Flexibility in marketing could not be said to reasonably include flexibility to mislead consumers, and no more flexibility should be acceptable regarding use of country names than is acceptable regarding use of national flags, emblems or symbols or the use of names and abbreviations of international intergovernmental organizations. The Delegation of Norway had also pointed out the lack of sufficient information on the implications of the proposed system, and wondered why the interest of some States should prevail over the users of the trademark system. In response, the Delegation of Jamaica emphasized that the protection of country names was linked to the protection of the rights and interests of legitimate businesses in a country to use their country name to promote their goods and services that originate in the country and thereby promoting the country itself. In turn, the Delegation wondered why should the interests of the users of the trademarks system prevail over the rights and interests of legitimate businesses in a country to use their country name to promote their goods and services unfettered by the threat of unfair competition by illegitimate users of the country name. As trademark users had rights and legitimate interests over their trademarks and as international intergovernmental organizations had rights and legitimate interests in their names to guarantee and differentiate origin, similarly, States had rights and legitimate interests in their flags, emblems, symbols and country name to guarantee and differentiate origin. The Delegation recognized the concerns expressed by the Delegation of South Africa about the reference in the proposed Joint Recommendation to harmonization of examination practices and determination of trademark registrability. However, harmonization could be interpreted and implemented in several ways. The proposed draft Joint Recommendation is a common approach to considering trademark applications that contained or consisted of a country name. The proposed approach is non-binding, based on consensus, and intended to serve as a guide to aid in the determination of trademark applications. The Delegation hoped that it would provide some level of consistent and interoperable treatment and protection of country names. It was not intended to require amendment of national law, although that would remain an option for States that wish to do so. Replying to the concerns that had been expressed by the Delegation of South Africa about the use of mandatory language in the proposed draft Joint Recommendation, the Delegation of Jamaica clarified that the language used in the proposed draft Joint Recommendation had been largely inspired from the language used by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO in the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, the Joint Recommendation Concerning Trademark Licenses and the Joint Recommendation Concerning the Protection of Marks and Other Industrial Property Rights in Signs on the Internet. All of the aforesaid Joint Recommendations used similar language, which was not mandatory but merely served to distinguish between what was recommended to be discretionary and what was recommended to be mandatory. The entire proposed document was a draft recommendation and was in no way mandatory. The Delegation of South Africa had also noted that some provisions of the proposed draft Joint Recommendation in relation to trademarks and business names were contrary to their national law. Since the text was a recommendation, the provisions were not mandatory and therefore did not necessitate any amendment of national laws. The expectation was that the recommendation would be implemented by Member States to the extent that it was consistent with their national law. Member States might choose to amend their national laws and/or policies where they deemed it desirable, but that would be a decision entirely of the Member State and there would be no legal

obligation to do so. Finally, the Delegation of South Africa had submitted that the Paris Convention, national legislation and office practice provided sufficient protection for country names as evidenced in the Study. The Delegation of Jamaica said that the Paris Convention did not provide protection for country names. While national legislation and office practice in some jurisdictions provided some protection for country names, in most cases, these did not go far enough, and national legislation and office practice varied widely across Member States, as shown in the Study. The provision of the Paris Convention that had been implemented in national legislation gave national flags, symbols and emblems a strong level of protection. It also protected the names and abbreviations of international intergovernmental organizations. A similar but softer nonbinding form of protection is sought for country names through the proposed draft Joint Recommendation. This was especially important given the fact that country names were more recognizable and more widely used than countries' flags, symbols and their emblems. The Delegation of Jamaica hoped that the responses provided addressed the concerns raised by some delegations, and remained open to respond to any further queries or concerns.

96. The Chair noted that the SCT would revert to that proposal at its next session. Furthermore, he requested the Secretariat to revise document SCT/30/4 to render it more descriptive of intellectual property office practices in the area of the protection of country names, for consideration at the next session of the SCT.

AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS

97. Discussions were based on documents SCT/30/7, SCT/31/7 and SCT/31/8 Rev.3

98. The Secretariat stated that it had received a communication from Portugal whereby Portugal joined itself as co-sponsor of the proposal by the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Republic of Moldova, Spain and Switzerland.

99. The Delegation of the European Union, on behalf of the European Union and its member states, expressed its preference for a separate debate on the two proposals.

100. The Chair opened the floor on the proposal made by the Delegation of the United States of America in documents SCT/30/7 and SCT/31/7.

101. The Delegation of the United States of America reiterated its proposal for the Secretariat to commence a study of national geographical indication systems, with the goal of launching a dialogue regarding a possible international geographical indication filing system. The Delegation, recalling that a group of WIPO members including the United States of America, was currently pursuing an inclusive geographical indication filing system in the Lisbon revision process, expressed its concern that the Lisbon Union might not be in a position to accommodate geographical indication registration systems that did not operate like the Union's appellation of origin and geographical indication systems. The Delegation stated that if the current Lisbon Union membership was not interested in making the necessary revisions to allow the United States of America and other similarly situated countries to join, it would need to consider whether it then must seek a different geographical indication registration system at WIPO that would suit the needs of non-Lisbon members. To that end, launching a discussion during the SCT, via a study, would be the next logical step. With respect to the opinion that the Madrid System was the alternative for geographical indications protected as trademarks, the Delegation was of the view that this was an incomplete solution for geographical indication registration systems that were neither appellation of origin nor trademark systems. The Delegation added that the SCT must consider what the Lisbon revision ultimately did and did not do, and then should consider whether the SCT must take action to fill the gaps left behind. The Delegation was hopeful that the information session on the Lisbon Agreement this week,

requested by the Delegation of the United States of America and other delegations, would help delegations to understand the impact of the Lisbon revision process and what gaps might be left in the framework for the international registration and protection of geographical indications. The Delegation noted that it viewed the Lisbon Agreement as a reciprocal protection arrangement for governments to exchange lists of appellations of origin, i.e., a specific type of geographic source identifier that was created, administered, and enforced by governments. To become a complete solution, the Lisbon Agreement would need to move away from the appellation of origin list exchange model. The Delegation observed that the reciprocal list exchange model was not compatible with the fee-funded geographical indication registration systems that existed in many countries requiring private party applications, *ex officio* examination, publication and opposition, as well as private party civil enforcement actions. The Delegation expressed the opinion that the reason why many fee-funded geographical indication registration systems were not compatible with protection stemming from governmental exchanges of geographical indication lists was because the traditional principles of territoriality, due process, and intellectual property as private rights were in many respects compromised by governmental list exchanges. Governments generally had greater power than non-governmental applicants and third parties, particularly where those applicants or third parties were individuals or small-to-medium sized enterprises. Thus, the Delegation believed that there was a likelihood that this asymmetry would undermine the balance of interests built into intellectual property registration systems, whereas any international geographical indication registration system must allow for the regular operation of national geographical indication systems and not dictate special treatment for powerful government interests. This meant that countries should have the ability to make their own determinations of protection of geographical indications rather than being bound by decisions made in other countries applying their own systems. In other words, prior users in each country should have the opportunity to assert appropriate defenses and Governments should not take the place of private parties in prosecuting or enforcing rights. The Delegation observed that the current draft of the basic proposal for the New Act of the Lisbon Agreement did not provide the policy space for national geographical indication systems to operate according to the principles of territoriality, due process and geographical indications as private property rights. The Delegation said that the principle of territoriality was important for geographical indication registration systems since it meant that countries could apply national law to balance national interests along with treaty obligations. Thus, the receiving country should not be bound to recognize or grant a presumption of protectability to the country of origin's protection. The Delegation added that the way to do this was to allow Contracting Parties to evaluate local reputation as an element of the definition of both appellations of origin and geographical indications. Similarly, the infringement standards should be tied to the perception of the local consumer and whether the appellation of origin or the geographical indication had a local reputation in the receiving country. If it did have a reputation, then any unauthorized use would be misleading or deceptive, but if there was no local reputation, the infringement standard should evaluate whether the local consumer was misled, confused or deceived. The delegation said that the Lisbon revision text should eliminate the presumption of deception and vague infringement standards if there was no reputation element required. The text should also eliminate the prohibition on a registered geographical indication becoming generic, even if the fact was that the geographical indication had become generic in the receiving country territory. Such a prohibition made it impossible to join for prospective Contracting Parties whose national systems require use, maintenance, or enforcement actions as a condition for continued protection. The Delegation further pointed out that the Lisbon revision text should respect the due process rights of prior users or prior right holders in receiving countries. Thus, the suggestion in the text that prior uses in receiving countries were somehow illegitimate and should be phased out prior to the decision to protect a conflicting foreign geographical indication, should be eliminated. The Delegation added that full effect to the rights of third parties should be given to request domestic invalidation of an international registration for any ground available under national law. Prior trademark owners should be given the right to prevent confusing uses of later conflicting geographical indications, to the extent allowed under national law. Finally, as regards geographical indications as private

property, the Delegation considered that the text should move away from the existing list exchange model whereby the government was authorized to operate as a proxy for the owner and negotiate protection in foreign markets. Observing that the identification of the holder of the international registration should be required, so as to allow accessions by geographical indication systems around the world that were set up as private right systems, the Delegation added that the text should also allow for Contracting Parties to require the applicant to have an intention to use the geographical indication in the receiving country territory as a condition for protection. Moreover, the Delegation believed that recognition of geographical indications as private rights meant that the text should not force Contracting Parties to accept a foreign government as an interested party in what was an *ex parte* application process between the applicant and the competent authority in the receiving country. In the view of the Delegation, this highlighted the need to also eliminate the financial subsidization that the Contracting Party governments of the Lisbon Union had historically enjoyed to fund the operations of the System, since the holders that benefited from using the Lisbon System were the ones who should pay for the costs of obtaining protection rather than WIPO, other more widely accepted registration systems, or non-party governments. In conclusion, the Delegation said that the Lisbon System should be revised to allow for collecting individual fees including maintenance and renewal fees, for the increase of the international application fees, for establishing a maintenance fee for the international registration, as well as for the funding through contributions in case of any deficit. The Delegation urged the SCT delegations to listen carefully at the information session to determine and evaluate whether geographical indication registration systems could be accommodated within the existing framework of the Lisbon revision discussion. It also urged members to send experts to the Diplomatic Conference in May to further evaluate the development of the Lisbon System and how it might leave gaps for the SCT to fill.

102. The Delegation of Italy confirmed that it was not in a position to endorse the work plan proposed by the United States of America since this proposal appeared to be intended not only to block or delay the Revision of the Lisbon Agreement, but also to put in question the existence of the Lisbon System. Furthermore, the Delegation said that the SCT was not the appropriate forum for discussing and taking any decision on the work of other bodies of the organization and on the fate, features, operations and finances of a WIPO global intellectual property system, such as the Lisbon System. The Delegation indicated that through a transparent and inclusive process, the revision had been seeking since 2009 to adapt the 1958 Lisbon Agreement to the evolving international intellectual property legislation, with a view to making it more attractive, while preserving its principles and objectives. Assuring that constructive proposals from WIPO members that were not party to the current agreement had been and would continue to be welcome by the Lisbon member States as a valuable contribution to the achievement of the goals of the revision, the Delegation stated that it looked forward to continuing such productive dialogue at the Diplomatic Conference of May 2015 and before. The Delegation added that it appreciated the proposals recently submitted by States, both party and not party to the Lisbon Agreement, and ensured that they were carefully examined. The Delegation, stating that such an initiative appeared to be a sign of a commitment from States not party to the Lisbon Agreement to engage in a successful revision of the Lisbon Agreement, pointed out that at the same time, some of these States supported a proposal that would jeopardize the overall revision process. Furthermore, the Delegation observed that, in order to reach a successful revision, flexibility and attempts to come closer to each other's position would be needed from States Party and not Party to the Lisbon Agreement. The Delegation further noted that, together with many other WIPO Member States, both developed and developing countries, it had been actively engaged in the revision of the Lisbon Agreement with the firm belief that its successful conclusion would bear significant benefits for countries, producers and consumers. The Delegation, observing that the revision would foster public and private investment in geographical indications and appellations of origin, with positive effects for the economy of a country in terms of competitiveness, export, diversification and job creation, added that it would also facilitate to producers worldwide the obtaining of protection in countries other than their country of origin, at an affordable cost. The Delegation also said that the revision would reduce

the risk to start judicial cases for misuse of geographical indications with expensive trials in foreign countries, and would also offer an opportunity to protect the unique features of producers' territory, such as traditional knowledge and biodiversity, and to transform them into marketable products. Although the benefits that the revision would bring were significant, the Delegation said that its scope should not be overestimated, since the revision aimed at improving and updating the legal framework which regulated the functioning of the Lisbon System and not at introducing a new one. The work undertaken consisted in updating the provisions of the Lisbon Agreement and clarifying their scope since already today, under certain conditions, geographical indications could be registered if the producer provided the required information on the link between a product and its territory of origin and even if a geographical indication was protected at the national level with a collective or a certification mark. The Delegation therefore believed that the revision did not harm the work of the SCT on the law of geographical indications and did not aim at imposing a single way of protecting geographical indications at the national level, nor a single mechanism to implement the TRIPS obligation, and any country remained free to join the Lisbon System. As to the substance of the work proposed by the United States of America, the Delegation continued to believe that such work would not add significant value to the work carried out in the past within the SCT or the work currently carried out within the WTO. Recalling that much work had already been done in the past on geographical indications within the SCT, as reflected in documents SCT/8/4, SCT/9/4, SCT/9/5 and SCT/10/4, the Delegation reiterated the view that there were no new elements that required restarting again this work, which would also duplicate the work carried out in WTO. In this respect, the Delegation mentioned the informal special session of the TRIPS Council that had briefed on the extensive body of the work on geographical indications at the WTO since 1997. The Delegation believed that another study on national geographical indication legislations would lead to the conclusion that was already known, namely that some countries protected geographical indications through the trademark system and others had developed *sui generis* systems. Indicating that it would not like to debate what type of legislation on geographical indications was the best one, as that was an evaluation that had to be made by each Member State, the Delegation observed that a solution desirable for certain countries might not be desirable for other countries. Each Member State was sovereign to choose according to the Development Agenda Recommendations on the basis of each level of development. The Delegation stated that it remained convinced that the diversity of intellectual property filing systems provided currently by WIPO, namely the Madrid and Lisbon Systems, were the fairest and most efficient way to accommodate such diversity among national legislations, and to leave to Member States the democratic right to choose which system of protection they wanted to have. Observing that the different filing systems had to preserve such diversity and prevent the situation where one type of legislation prevailed over the other, the Delegation stated that blocking the revision of the Lisbon Agreement or removing the Lisbon System in total would undermine this diversity and limit the flexibility allowed to Member States by the TRIPS Agreement. Finally, the Delegation said that the revision was an opportunity to consolidate and strengthen the important role that the Lisbon System played within the WIPO global intellectual property system, which was to provide a system that was open also to Member States that protected geographical indications through a *sui generis* protection and that was accessible to producers that used such kind of protection. Therefore, such a system represented a necessary complement to the Madrid System. The Lisbon System would remain one of the international avenues available at WIPO through which producers could seek protection of their geographical indications. The Delegation underlined the fact that the revision of the Lisbon agreement aimed at ensuring, in years to come, an additional choice to producers who would be free to choose which system of protection would be the best option for them: a *sui generis* protection system, a trademark system, or both. The Delegation supported the appeal that had been made to other delegations to participate at the Diplomatic Conference for the Adoption of a new Act of the Lisbon Agreement for the Protection of Origin and Their International Registration in order to adopt an instrument that could provide a meaningful contribution to development.

103. The Delegation of the European Union, on behalf of the European Union and its member states, said that the proposal made by the United States of America in document SCT/31/7 would add nothing new to what was known. The Delegation believed that the best way to accommodate the diversity of national systems was through the expansion of the relevant registration systems run by WIPO, namely the Lisbon and Madrid Systems. The Delegation stated that moving ahead with the revision of the Lisbon System should be WIPO's first priority on geographical indications, improving the diversity and flexibility allowed to Member States by the TRIPS Agreement. A key aim of this revision was to make the Lisbon System more attractive to countries that were currently not party to it. The revision constituted an opportunity to consolidate the important function that the Lisbon System played within the WIPO global intellectual property systems, so that in the years to come all geographical indications producers would have an avenue at WIPO, irrespective of the system they used at the national level. The Delegation stated that the revised Lisbon Agreement would offer new members a modern multilateral instrument which would enable them to take advantage of the significant benefits stemming from the unique features of the producers' territory and would assist them in transforming these features into marketable products. Pointing out that appellations of origin and geographical indications could turn producers of labour-intensive commodities into exporters of high-quality agro-business and handicraft products, the Delegation added that the revision would have the potential to provide a significant incentive for growth and employment. The Delegation further said that the Lisbon System Working Group had established, in a process which was open to all WIPO members and allowed observer members to table amendments, a basic proposal for the revision of the Lisbon System, as a means for obtaining geographical indication protection internationally, through a single registration. Observing that the Diplomatic Conference for the Adoption of a Revised Lisbon Agreement on Appellations of Origin and Geographical Indications in May would pronounce itself on the basic proposal, the Delegation stated that the SCT was not the appropriate forum to deal with the revision process. Consequently, since it did not feel that such a work program would add value at the present time, the Delegation of the European Union, on behalf of the European Union and its member states, declared that it was not in a position to endorse it.

104. The Delegation of Romania, on behalf of the CEBS Group, reiterated its view that the proposed study would not add any value to the work already done by the SCT. The Delegation strongly believed that the effort should be directed at improving and expanding the current WIPO registration systems, such as the Lisbon and Madrid Systems.

105. The Delegation of France recalled that, while it was not opposed in principle to undertaking work on geographical indications within the SCT, it believed that the proposed study would not add anything new to the debate. The Delegation said that the mandate of the various working groups should be respected and the work undertaken by the Lisbon Working Group should not be bypassed. The Delegation further declared that WIPO should seek to improve the registration system covered by the Lisbon System, which did not weaken a country's freedom to use the method of protection of geographical indications which it judged most appropriate. The Delegation also stated that the work on the Lisbon Treaty had been transparent, inclusive and respectful of views, as countries wishing to participate in the work had been able to do so and as some amendments included in the text had been proposed by observer countries. The Delegation recalled that the budget for the Diplomatic Conference in May was voted by all WIPO members two years ago. The Delegation, expressing its wish to benefit from all opportunities for discussion and debate, reminded other delegations about the information session on the Lisbon Agreement which would take place this week, and informed them of a side event which would be organized on April 22 by the European Union, France and Italy, on the sidelines of the Committee on Development and Intellectual Property (CDIP), in order to clarify why geographical indications were an engine of growth for development. Finally,

the Delegation, pointing out that the Diplomatic Conference in May would conclude work initiated six years ago, declared that it sought to ensure the co-existence of different systems, and in no case the standardization of a single model that would be suitable to some but not to others.

106. The Delegation of Hungary, associating itself with the arguments of the Delegations of the CEBS Group, the European Union, France and Italy, said that it was not in a position to support further work on geographical indications based on the work program proposed by the Delegation of the United States of America.

107. The Delegations of Portugal and Spain aligned themselves with the statement made by the Delegations of the CEBS Group, the European Union, France, Hungary and Italy.

108. The Representative of AIPLA expressed its support for the proposal made by the United States of America, as much had changed since a comprehensive study on appellations of origin had been conducted. The Trade Agreement between Canada and the European Union in 2013 had substantively altered the regime in Canada, regarding how to treat geographical indications and appellations of origin. A study would shed light, not only on how *sui generis* and trademark systems protected geographical indications, but also on the intergovernmental agreements in place, the way that prior users were handled and other details that made it difficult for private practitioners to advise clients on geographical indications. The Representative, expressing the view that this study would neither counter the diplomatic conference nor block it, stated that, on the contrary, it would help to support the work coming out of the diplomatic conference. The Representative said that if the goal was to expand the Lisbon System, a study would help Lisbon members to learn how to do that beyond its own membership.

109. The Delegation of Chile reiterated its support for the undertaking of a study or series of studies on the manner in which national legislations considered certain aspects of geographical indications, particularly where there was no agreement at an international level. Therefore, the Delegation supported any proposal which would assist its Delegation in better understanding these matters, including those relating to the Lisbon Agreement. The Delegation pointed out that it was not surprising to see matters discussed by this Committee linked to other issues discussed within this house. In conclusion, the Delegation underlined the fact that geographical indications were and would continue to be of the greatest importance for its country.

110. The Delegation of Switzerland stated that the SCT was not the appropriate location and that this was not the appropriate time to entertain the proposal of the United States of America, since this proposal was explicitly related to the ongoing work of the revision of the Lisbon System. As the different systems and views within WIPO Member States on geographical indication protection were well-known, the Delegation stated that the priority should be focused on the preparation of the discussions which would take place at the diplomatic conference, in a spirit of openness and the willingness to negotiate solutions of compromise, in order to satisfy the largest number of countries as possible and encourage them to participate in the Lisbon Agreement. In its view, once the results of the diplomatic conference would be known, each Member State of WIPO would have to take a position on this matter and on the possible commencement of new work on geographical indications if deemed relevant.

111. The Delegation of Australia, declaring that geographical indications were an important area of international intellectual property law, welcomed the opportunity to discuss this topic during the SCT. The Delegation, stating that it supported the study on specific geographical indication topics, said that it was important for all Member States to understand and take into account different national regimes and routes for obtaining international protection. Recalling that under the TRIPS Agreement all parties must protect geographical indications in their national systems, the Delegation pointed out that the SCT was best placed for that discussion

because of the diversity of geographical indication regimes established in its membership. Alongside its willingness to share its experience of operating both a *sui generis* protection system for wines and protection under the certification trademark system, the Delegation expressed its interest in the geographical indication protection systems of other countries. The Delegation added that Australian agricultural traders who wanted to get geographical indication protection in other markets also had an interest, as well as industries who exported to other markets and who used common names. The Delegation said that the key issues for its Delegation included how Member States considered applications for geographical indications in their territory, what tests might be applied to whether or not protection was granted, how prior trademark rights or terms that might be generic were treated under Member States' respective legislation, and what exceptions were available to the protection that might be granted, for example, fair use of common names or for public morality. The Delegation underlined the importance of these issues and added that a study to help all Member States to understand them would help all agricultural producers and exporters to make use of the intellectual protection available in other markets. Further, the Delegation expressed its interest in discussing the concept of a geographical indication filing system that would be inclusive of all protection mechanisms. In its view, the Madrid Protocol or the Geneva Act of the Hague Agreement were appropriate models for an inclusive international filing system for geographical indications. They created a mechanism for intellectual property owners to apply for, and maintain, national rights, without requiring substantive harmonization rules. They also enabled officers in Contracting Parties to recover the costs of processing. An inclusive model for an international filing system would enable greater membership, increasing the value of the Treaty. The Delegation remained optimistic that a decision to deny equal participation at the Diplomatic Conference could be reconsidered since the Delegation did not see any reason to depart from 25 years of precedent of open diplomatic conferences, especially in relation to an issue that was of interest and important to so many WIPO members. Some of the broader WIPO membership had already made constructive contributions to the development of this revision and wished to continue to do so. The Delegation noted that equal participation at the Diplomatic Conference would provide a genuine and meaningful way to continue good faith participation, as well as greater acceptance and membership of the concluded Treaty. The Delegation expressed its concerns that a revised Lisbon Agreement, which preserved the features that discouraged membership, would continue to discourage membership in the future, and would act against the aim of broadening geographical coverage, undermining the utility of the Treaty. Producers and farmers from current and future Lisbon members would not be able to use the Lisbon System to acquire protection in countries that were not members of this Treaty. Declaring that it was important that any international filing system for geographical indications be self-sustaining and enable the officers of Contracting Parties to collect individual fees so that the costs of processing and examination could be recovered, the Delegation said that the introduction of individual fees in the Madrid System facilitated an increase in its membership. The Delegation considered that the possibility of fees at the national level was very important, particularly for developing countries. Without the possibility of recovering costs, taxpayers and competent authorities like intellectual property offices would shelter the cost of protecting foreign intellectual property rights. Domestic fees paid by national rights holders would have to subsidize the protection of foreign intellectual property rights filed through the international filing system. The Delegation thought that the Lisbon revision should clearly incorporate a mechanism enabling Contracting Parties to charge individual fees, rather than delay their incorporation to a later time. The Delegation expressed its incomprehension in the problem of including such a possibility since, if producers and current Lisbon members did not want to pay individual fees, they could simply renounce protection in the countries that would charge them. Their producers would, at least, have the option of seeking protection in a wider range of members through the Lisbon System than if the possibility would have not been available. In relation to the availability of the Madrid System for WIPO members seeking international protection for geographical indications registered as collective or certification trademarks, the Delegation failed to see the utility of such a suggestion. Geographical indication beneficiaries or holders would have to use two international filing regimes to seek international protection for

one geographical indication. The Delegation said that it should be possible to develop one system that could be used to obtain protection of one geographical indication around the world, and Australia was not the only country which provided for more than one method of protecting a geographical indication. The Delegation also raised concerns related to the potential barrier to entry to the Lisbon System by making it a condition of accession that new members should protect or refuse all of the appellations of origin and geographical indications that were already protected under it, which was not a requirement under the Madrid, PCT or Hague Systems. Acceding parties would have to examine or assess all appellations of origin or geographical indications in the international register. While it might be attractive to some countries that protection for geographical indications around the world could be obtained cheaply, the Delegation indicated that most countries had very few geographical indications. These countries would be expected in return to process thousands of foreign geographical indications, and might not even be able to charge a fee for this work to cover their costs. The Delegation further highlighted that such an accession process would undermine the legitimate consideration of whether a term on the international register qualified for protection in any particular country. Contracting Parties had to make sovereign decisions about whether a geographical indication should be protected or not, for example when there were prior trademark rights or when a term was legitimately needed by traders within the country to describe their products as the common name of the good. The Delegation expressed its concern regarding the potential for the revised Lisbon Agreement to contain provisions that were inconsistent with the TRIPS obligations and subsequent WTO dispute outcomes on the relationship between later geographical indications and earlier trademark rights. If exclusive trademark rights had been obtained in good faith through the procedures of the territory concerned, those rights should be exclusive and subject only to the limited exceptions available under the TRIPS Agreement. The Delegation said that a WIPO Treaty should not envisage that a later right, whether a trademark or a geographical indication, that was obtained under the national laws of a different country, would, by default, co-exist with an earlier trademark in the Contracting Party concerned. The Delegation considered that this would seriously undermine business confidence in using the trademark system. As regards the requirements imposed on Contracting Parties in relation to the treatment of generic terms, the Delegation was of the view that the question whether a geographical indication protected in a Contracting Party could be considered to have become generic, was a matter for the national law, and should not depend upon what would happen in the country of origin. The Delegation said that it was a question of fact, not something that could be dictated across borders in the absence of evidence. For example, in Australia, the question was determined by the courts. The Delegation, questioning whether the Lisbon System would really need to dictate in detail how its members would deal with the issue of generic terms, said that deleting this requirement would not have any effect on the national practices of existing members and could, in fact, facilitate greater membership of that system. The Delegation expressed its concerns about the fact that the revised Lisbon System could seriously limit the grounds upon which a geographical indication could be invalidated in the Contracting Parties. It considered the availability of review mechanisms for administrative decisions to be fundamental to systems that operated transparently and in the public interest. Sometimes, decisions to protect intellectual property might be made in error or in the absence of all the information required, or circumstances could change over time in the territory concerned. The Delegation said that one of the options under consideration for invalidation was so limited that it would exclude countries with either *sui generis* or trademark regimes from joining. The Delegation mentioned, as examples, that the revision did not include that the sign was contrary to public order or morality, that the sign was not protected or had ceased to be protected in its country of origin, nor that it had fallen into disuse in its country of origin.

112. The Delegation of Iran (Islamic Republic of) recalled that Unions established by WIPO Treaties were governed by decisions of its Member States. Therefore, the SCT could not reopen decisions of the Lisbon Assembly to convene a diplomatic conference or to revise that process. Underlining the fact that the Lisbon Working Group had been inclusive and

transparent, the Delegation observed that the records of the meetings of the Lisbon Working Group showed that most of the countries which were opposing the process did not even participate or had chosen to keep silent in the course of the Lisbon Working Group negotiations. The Delegation emphasized that, once a country accepted an obligation within a system, it could benefit from the rights derived from that obligation. Therefore, in a diplomatic conference, it was up to the member States of the Union to decide on the final text. The Delegation observed that the result of the Lisbon Working Group had been innovative and remarkable, with the aim to widen membership. The economic value of the system would become gradually apparent for countries, especially developing countries, if the Lisbon Treaty turned into a robust and effective instrument which was capable of preventing the misuse and misappropriation of appellations of origin and geographical indications, which did not yet enjoy an appropriate protection when compared with trademarks. The SCT deliberations should assist the process. Stating that the challenges around geographical indications could not be settled by creating a filing system or preparing a study on existing national geographical indication regimes, the Delegation expressed the view that consideration should be given to creating a simple system with the possibility of invalidating deceptive trademarks which conflicted with a geographical indication. Therefore, the Delegation considered that the proposal made by the Delegation of the United States of America did not bring any added value to the geographical indication discussion in WIPO, and was therefore not in a position to accept it.

113. The Delegation of Argentina, stressing that the SCT was the appropriate place to discuss geographical indications with the participation of all WIPO Member States, indicated that it would be useful to have a study of the national systems for the protection of geographical indications, as the diversity of such systems of protection could create difficulties when seeking to establish a uniform register. The Delegation said that the existence of a single system with international scope would affect national systems and could prejudice the development strategies of each country. Consequently, the Delegation thanked the Delegation of the United States of America for its proposal, since such a study would allow an overall view of the various systems of protection and would design an inclusive register of protection systems for all. The Delegation, reiterating its concern regarding the revision of the Lisbon Agreement currently underway, said that such a revision had given rise to a number of problematic issues, particularly on substance. By incorporating geographical indications, the revision would create a new agreement, different in nature from the current Lisbon Agreement, without the full participation of all WIPO Member States. In addition such a new agreement, by considering issues relating to geographical indications, would overlap with the TRIPS Agreement, particularly as regards issues such as the territoriality of protection, afforded to trademarks and the question of genericness. This would undoubtedly impede accession to the New Lisbon Agreement by countries which had established protection for their geographical indications on the basis of the TRIPS Agreement.

114. The Delegation of the Republic of Korea said that it fully supported the proposal made by the United States of America and aligned itself with the statements made by the Delegations of Argentina, Australia and Chile. The Delegation said that the SCT was the appropriate place for a discussion on geographical indications since all Member States could participate in the discussion. Recalling that the proposed new text of the Lisbon Agreement included the terminology of geographical indications, the Delegation underscored the fact that in its country geographical indications and appellations of origin were differently protected. The Delegation expressed the view that, by including the term “geographical indication”, the revision would change the scope of protection. In this context, the Delegation believed that the discussion should not be limited to the Lisbon Agreement members.

115. The Delegation of Canada said that there could be added value in studying aspects of geographical indication protection as national systems did differ. The Delegation noted that several years had passed since the SCT had looked at geographical indications. Likewise, during the last years, various bilateral treaties had been signed. Therefore, it was timely to

conduct an update of the work that had been carried out at WIPO some years ago. The Delegation also pointed out that the question of the genericness test had never been fully scoped out and that it would be interested in a study on that issue. The Delegation believed that the proposal had merit in light of the fast developing discussions on geographical indications at multilateral, bilateral and regional levels, and the need to understand the emerging global understandings on this issue. In conclusion, the Delegation stated that Canada supported further study and analysis by this Committee, as suggested by the proposal.

116. The Delegation of Brazil, underlining the fact that Brazil had always upheld the idea of inclusiveness in multilateral negotiations, highlighted the importance of holding inclusive discussions in the Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement. Recalling that Recommendation 15 of the Development Agenda explicitly called for all activities to be inclusive and member-driven, the Delegation said that all Member States should participate on an equal footing in the Diplomatic Conference, as this would be in line with the positive practice established in WIPO.

117. The Delegation of Japan, in its national capacity, indicated that the SCT was the appropriate forum to discuss geographical indications and believed that the proposal made by the Delegation of the United States of America would contribute to better understand this field.

118. The Representative of INTA, reiterating the view that there was a need for review and clarification of the various national approaches to the protection of geographical indications and of how international obligations, notably under the TRIPS Agreement, were met in this respect, believed that the SCT should address this issue. The Representative welcomed and supported the proposal made by the Delegation of the United States of America to explore the feasibility of geographical indication filing systems that would be inclusive for all national protection mechanisms and that would be based on the principles of territoriality, priority and exclusivity.

119. The Delegation of the Russian Federation pointed out the usefulness of a survey that would give a full picture of the protection of geographical indications in most of the countries of the world. The Delegation believed that such a survey would be useful to develop the international system of protection, although all systems, including the Lisbon System should develop. The Delegation said that this could be done by finding a single system of protection for geographical indications. In its view, linking such a survey to a particular state of development of the Lisbon System was not perhaps the right way to go about it, although renovating the Lisbon Agreement would be of interest to countries that were not a member of that system. In summary, while the Delegation supported the carrying out of a survey on geographical indications, the Delegation said that it would be necessary to determine the time when this survey should be done by this Committee.

120. The Representative of oriGin reiterated its interest in the successful outcome of the reform of the Lisbon Agreement, since it believed that it could serve the interest of geographical indication groups that needed to obtain international protection of their geographical indications at controlled cost. The Representative, noting the importance of the United States of America's market for geographical indications, in particular the growing wine sector of the American Viticulture Area (AVA), with more than 200 certifications and collective marks certifying geographical origin, recalled the importance of taking into account the point of view of all non-member States, and encouraged all the Lisbon member States to consider such views as much as possible in order to have a large number of States joining this Treaty. The Representative indicated that it did not share the view that the new Lisbon Agreement did not respect the territoriality principle and due process. The Representative explained that once an international registration had been made for an appellation of origin or a geographical indication, each Lisbon member would have one year to go through those applications, and if needed, could refuse them based on a previous trademark, on genericity, or based on the fact that the geographical indication did not match the definition of geographical indication and appellation of

origin. Therefore, the Representative believed that the principle of territoriality and due process was fully respected in the Lisbon Agreement, both in its current version and in the revised text. With respect to private rights, the Representative pointed out that one of the main reforms of the draft Treaty was the possibility for the beneficiaries and owners of private rights to file the international application directly, if the national law allowed it. The Representative invited all Delegations to have a fresh look at the Lisbon Agreement and try to be as flexible as possible.

121. The Delegation of the United States of America thanked delegations for their points of view on its proposal. The Delegation also thanked the Delegations of Argentina, Australia, Canada, Chile, Japan, Republic of Korea, Russian Federation as well as the Representatives of AIPLA and INTA, for their support, as well as the Delegation of Brazil for pointing out the need for inclusiveness at the Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement. The Delegation observed that it was perhaps overestimating Lisbon's scope because it was hopeful that it could be made into a complete solution for the international protection for geographical indications. However, the Delegation said that, if following the Diplomatic Conference, the system did not become compatible with geographical indication registration systems, the SCT would need to discuss that issue. Declaring that the proposed survey was an attempt to launch that discussion with good information about national systems, the Delegation said that it took the suggestion of both the Delegations of the Russian Federation and Switzerland on the timing of the proposed survey. It added that its proposal was not meant to derail the Lisbon revision process or to undermine it in any way, but merely to launch a study process to clean up after the Lisbon process, if there was any cleaning up to do and if there was any gap left behind to fill. The Delegation observed that the Madrid System for the International Registration of Trademarks was an incomplete solution since it did not accommodate geographical indication registration systems, and that the Lisbon System did not accommodate all geographical indication registration systems either. The Delegation, concluding that it would engage in the process, maintained that its proposed study would help launch the dialogue at the SCT and hoped that delegations would support it.

122. The Delegation of Hungary presented a proposal, jointly sponsored by the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Republic of Moldova, Portugal, Spain and Switzerland, on the protection of country names and geographical indications in the DNS. The Delegation recalled that delegations and observers had continuously stressed, since the twenty-fourth session of the SCT, their concerns about the new top level domain names introduced by ICANN in 2013. In its opinion, the reasons for misgivings were twofold. Firstly, stakeholders were faced with difficulties in safeguarding their intellectual property rights against the delegation and use of conflicting domain names. Secondly, the extension of new gTLD opened a new horizon for cybersquatting while legal instruments and remedies were not available or had only a limited effect. The Delegation believed that the most risky consequence of the new system was the second level delegation since, once a new gTLD had been delegated, its holder had full monopoly over sub-delegating while intellectual property holders had no possibility to oppose to the second level delegation. In order to demonstrate the volume of this phenomenon, the Delegation referred to document SCT/33/4 Rev. on the update on Trademark-Related Aspects of the DNS, stressing that the delegation of 500 new gTLDs had attracted over four million second level registrations. At the same time, the Delegation noted that discussions within the SCT had influenced the norm setting process of ICANN with positive effect on enhanced legal rights protection mechanism in the area of trademarks. In this regard, the extension of the UDRP to new generic top level domain names for trademark disputes or the protection of intergovernmental organizations names were good examples. However, the Delegation regretted that significantly improved provisions of the ICANN Applicant Guidebook for the new gTLDs failed to resolve important issues, such as the protection of country names and geographical indications, including appellations of origin. As to the list of important geographical names, which could not be delegated without the consent of the relevant authority, the Delegation said that it was neither convinced by the faithful application of this list nor by the ambition of the list of including all important geographical names. In its view, it would be

beneficial for all stakeholders to analyze the experience so far in implementing that list, with a view to making recommendations on the possible ways of improving the list and the related application procedure rules. The Delegation also recalled that several delegations had considered that the list of important geographical names should be extended to protected appellations of origin and geographical indications. The Delegation believed that these denominations enjoyed high reputation and represented high commercial value. For this reason, they were often subject of infringement, being used for designating products not originating from the area of the geographical indication at stake, which was extremely detrimental to the reputation of geographical indication. The Delegation added that such unlawful use disturbed fair competition on the market and was harmful for consumers, producers and local communities. Therefore, the Delegation believed that the demand from beneficiaries of geographical indications to have guarantees that their legitimate interests would be preserved in the new generic DNS was well-founded. While the new legal rights protection mechanism was available to business operators on the basis of trademark law, the holders of geographical indications under *sui generis* systems had no possibility to protect their rights. Recalling that the TRIPS Agreement obliged Member States to provide protection for geographical indications, the Delegation believed that the lack of an agreement on the scope of protection among Member States could not be an excuse for not adopting efficient measures against geographical indication misuse in the DNS. Based on the same considerations, the Delegation believed that it would be reasonable to investigate the possible extension of the Uniform Domain Name Dispute Resolution Policy (UDRP) to country names and geographical indications. The Delegation also recalled that WIPO had conducted two studies in the course of the first and second WIPO Internet Domain Name Processes. Interviews of stakeholders undertaken at that time had shown that country names, important geographical names and geographical indications were targets of cybersquatting. The Delegation regretted that, despite this signal, the admissibility of complaints under the UDRP still remained limited to trademarks only. In its opinion, it was difficult, if not impossible, to justify that the interests of trademark owners against conflicting domain names were preserved in an efficient and frequently used system, such as the UDRP, while the same possibility was not provided for individual States or holders of geographical indications. The Delegation recalled that, as a consequence of this missing balance, the WIPO General Assembly had taken a decision, in 2002, to extend the scope of the UDRP to country names. However, the Delegation observed the unchanged scope of domain names mediation and arbitration and the lack of progress on this issue. The Delegation observed that more than a decade had passed since that and a revision of the situation would be worth. In addition, the SCT could take advantage of the timing since ICANN had decided to revise the WIPO UDRP. Consequently, the Delegation, together with the co-sponsoring delegations, suggested opening discussions regarding both issues, namely the possible improvement and extension of the list of important geographical names administered by ICANN and the possible extension of the scope of WIPO UDRP to country names and geographical indications.

123. The Delegation of Romania, on behalf of the CEBS Group, expressed its support to the joint proposal indicating it was well justified in the current international context, where States had a limited role in shaping the system of protection of geographical indications on the Internet. Expressing the opinion that the two proposed studies were different in substance, the Delegation opposed to the possibility of conducting a study covering both proposals put forward under Agenda Item 7.

124. The Delegation of the European Union, on behalf of the European Union and its member states, stated that the European Union and its member states attached great significance to the protection of geographical indications because of their economic importance. Expressing its interest in the proposal to conduct a study on geographical indications and domain names, the Delegation believed that the topic and the proposed study posed new substantive questions in relation to geographical indications and the DNS. Considering that those questions were different from the questions posed by the Delegation of the United States

of America in its proposal, the Delegation did not support a merger of the two studies. Observing that this proposal had already gained support among a number of SCT members, the Delegation concluded that the proposal should serve as a basis for the future work of the SCT under this agenda item.

125. The Delegation of Italy, reiterating its readiness to discuss geographical indications, believed that the SCT should focus on current problems faced by geographical indication holders in the DNS. Aligning itself with the statements made by the Delegations of Hungary and the European Union, the Delegation recalled that during the first and second WIPO Internet Domain Name processes, it had been recognized that the practice of abusive registration of the domain names extended to intellectual property rights other than trademarks and service marks. It had been acknowledged that abuses in the registration of geographical indications and country names were similar, if not identical, to those observed in relation to trademarks and service marks. The Delegation stressed the fact that these matters appeared as more urgent today, in the light of the increasing role of Internet in the global movement of goods and services and the expansion of top level domain names and, particularly, of the issuance of new generic top level domain names. For this reason, Italy and the co-sponsors had put forward a proposal aimed at discussing within the SCT, on the basis of a study, the concerns of geographical indication users and of individual States. The goal of the proposal consisted in recommending the modification of the UDRP to allow filing complaints against abusive registration and use of geographical indications and the broadening of the scope of the UDRP to country names, following the decision of the General Assembly in 2002. The Delegation said that it was difficult not to recognize that the interests of trademark owners against conflicting domain names were preserved through an efficient and frequently used system, such as the UDRP, while the same possibility was not provided for individual States or owners of geographical indications. The Delegation said that the diversity among national legislations was no longer tenable to deny equal dignity to all recognized intellectual property rights and the need of protection of geographical names in the DNS. Indicating that the proposal also addressed the risk of abuses in the delegation of the new generic top level domain names, the Delegation recalled that ICANN had developed a list of important geographical names and had established that any application for a generic top level domain containing such names had to meet additional requirements, as defined in the Applicant Guidebook. The Delegation, however, believed that more clarity on the selection standards used to create the list and on the possibility of States to include further geographical names was needed. The Delegation wondered about the effectiveness of that remedy and the methods of its application, and whether it covered as well variations of important geographical names. The Delegation believed that the list of important geographical names had to be inclusive and contain all names historically, culturally and commercially important for a country or local government. The Delegation added that the list should include protected geographical indications and protected appellations of origins. Finally, the Delegation said that the work in this area was in the interest of all WIPO Member States and asked the Secretariat to prepare a working document on the protection of important geographical names and the delegation of generic top level domains in order to be able to formulate a recommendation to revise the ICANN Applicant Guidebook. Noting that during the last session of the SCT several delegations had expressed their support to the proposal, the Delegation expressed the hope that it would be accepted as a basis for further work by the SCT on geographical indications. The Delegation also believed that this proposal had posed new substantive questions in relation to geographical indications and the DNS, different from the conceptual issues raised in the proposal put forward by the Delegation of the United States of the America. In conclusion, the Delegation opposed to a merger of those two proposals.

126. The Delegation of Australia, concurring with the view that intellectual property rights, including geographical indications, should not be misused in the DNS, said that the existing safeguards, including those proposed by the ICANN Government Advisory Committee (GAC) in the Beijing Communication, were appropriate and sufficient to deal with the potential misuse of

geographical indications in the DNS. The Delegation stated that it was not convinced that any need for additional safeguards for new generic top level domain names in respect of geographical indications had been demonstrated. Due to different national systems and policies on the protection of geographical indications around the world, along with the different significance of geographical terms in different territories, the Delegation believed that the broader issue of international geographical indication regulation remained unsettled. The Delegation considered important to discuss and find common grounds on these basic geographical indication issues before applying the principles to geographical indications use on the internet. Further, the Delegation stressed the imperativeness to hold open, inclusive discussions about geographical indications more generally before narrowing the focus to specific and complex issues. Referring to the proposal put forward in document SCT/31/8 Rev.3, the Delegation said that mechanisms existed to address infringement under national law and, given the different consumer perception of geographical indication infringement, those should be determined under the national laws of the countries concerned. If the UDRP were to be expanded to include disputes regarding bad faith use and/or registration of geographical indications, then many of the disputes would likely involve two legitimately interested parties or holders. The Delegation believed that those were more complex questions than envisaged by the current UDRP. The Delegation was not convinced that in the online world GIs and terms associated with GIs should be exclusively limited to the owner or beneficiaries of the geographical indications in the originating country. The Delegation also believed that whether to assign geographical indications was a matter of national law and consumer perception in the territory concerned, which could differ widely across jurisdictions. Some terms would have geographical significance in one country or region but be part of ordinary language in another. Finally, if a geographical indication was not protected as such in some jurisdictions, the legitimate use of the same or similar term, in the Delegation's view, shouldn't be curtailed in those jurisdictions.

127. The Delegation of Monaco, expressing its support for the joint proposal, believed that geographical indications and country names should be better protected, particularly in the area of domain names, given the importance of Internet in the global economy. Noting that this issue was of a different nature from that addressed in the proposal of the United States of America, the Delegation believed that it would be appropriate to conduct two separate studies.

128. The Delegation of Iran (Islamic Republic of), considering that the SCT was an appropriate forum for any kind of norm setting aiming at strengthening geographical indication protection against misuse, believed that the proposal was timely and had value and, therefore, expressed its support for it. The Delegation believed that the deficiencies and the limited nature of the WIPO UDRP had turned into urgent challenges for geographical indication holders, especially in the light of the growing use of DNS in business. Finally, the Delegation that believed addressing the problems averted in the proposal could enhance the reliability of the DNS and would have a deterring effect on misleading and deceptive practices associated with geographical indications and domain names.

129. The Delegation of Mexico, expressing its support for conducting a study based on the proposal, stressed the need for an inclusive system and the extension of the UDRP to country names and geographical indications. The Delegation noted that two requests for domain names ".amazon" and ".patagonia" had been filed without the agreement of the countries concerned. In the case of ".amazon", it had been recognized that there were no national or international rules applicable in the area of geographical indications which would allow rejecting or accepting such a request. Consequently, the Delegation believed that the instruments designed by ICANN for geographical names should take into account these issues. The Delegation concluded that it was important to gather information and to initiate debates on the matter.

130. The Delegation of Switzerland, aligning itself with the statements by the Delegations of Hungary, Iran (Islamic Republic of), Italy, Mexico, Monaco and Romania, on behalf of the CEBS Group, believed that it was fundamental that the Committee consider concrete and current intellectual property issues, like risks related to abusive use of domain names. In its view, in order to find appropriate solutions to the problems raised, a study of such issues within the SCT was needed, contrary to a general study on national systems of geographical indication protection. Finally, the Delegation opposed to the consideration of these two proposals in a single study.

131. The Delegation of Spain echoed the statements made previously and noted that those two subjects should be treated separately.

132. The Delegation of France, stressing the importance of WIPO's role in the protection of intellectual property rights with regard to domain names, said that the protection of signs in the DNS should not be limited to trademarks, but should also cover country names and geographical indications. Referring to the *lacunae* in the geographical indication protection within the DNS in the context of its expansion, the Delegation believed that the joint proposal was precise and differed from the competing proposal. Noting that the proposal co-sponsored by its Delegation had a specific operational objective, namely the potential expansion of the UDRP principles currently limited to prior trademarks, the Delegation supported the undertaking of this study.

133. The Delegation of the United States of America, aligning itself with the statement by the Delegation of Australia and concurring with the view that the existing safeguards built into the DNS and gTLD registry operator's obligations were perfectly sufficient, did not support the undertaking of the study. The Delegation believed that a dialogue on geographical indications was essential to promote common understanding. Without that understanding, in the Delegation's view, the SCT would not be in a position to advance any international recommendation regarding geographical indication protection. The Delegation had observed disagreements on the appropriate scope of geographical indication protection against misuse. Taking into account that the lack of consensus as to the expansion of the UDRP to geographical indications had existed during the WIPO second process and still remained, the Delegation believed that a study on geographical indications and the DNS was premature. The Delegation also believed that a delimitation of geographical indications, which were private property rights and country names, which were not private property rights, was necessary. Noting that the list of geographic names that would be reserved in the gTLD application process had been discussed within the ICANN, GAC and ICANN community, the Delegation suggested that national positions on that issue be advanced within ICANN and their GAC Representative. For all of these reasons, the Delegation was not in favor of the SCT considering geographical indications in the DNS or launching a study on this issue at this time.

134. The Representative of orlGin pointed out that the protection of geographical indications in the DNS remained a priority, especially in the context of the DNS expansion. The Representative said that the majority of geographical indication groups had limited resources and would probably face technical and financial problems in monitoring and enforcing geographical indication rights in over 200 domain names. The Representative wondered why the site "colombia.coffee" could be eventually invalidated on the basis of a prior right over a trademark but not over a geographical indication. The Representative further expressed the same concerns with regard to variations of geographical names, used as domain names for web sites offering counterfeited goods. In conclusion, the Representative believed that the UDRP should comprise geographical indications and expressed the wish that cost effective systems for both geographical indication and trademark protection be studied within the SCT.

135. The Delegation of Jamaica expressed its support for the study on geographical indications in the DNS.

136. The Representative of ICANN said that, following an extensive dialogue in the ICANN between the stakeholders' community, governments, rights holders, businesses, civil society and users, a list of country names protected at the first and second level had been elaborated. This list, however, did not comprise geographical indications or other variations of geographical names. Discussions had been taking place in ICANN within a working group comprised of representatives from governments, registrars, registries, intellectual property holders, businesses, civil society and users, on whether that list should be amended in any form and on implications of a possible extension of that list to other geographical terms. The Representative mentioned that a working group within the GAC also had been mandated to deal with these issues.

137. The Representative of ECTA expressed its support for the proposal submitted by the Delegation of Hungary and other co-sponsors.

138. The Delegation of Hungary, while thanking the delegations who had expressed their support for the proposal, noted that the ICANN Applicant Guidebook for the new gTLDs contained some intellectual property-related provisions. One of the aims of this proposal was to provide a possibility for intellectual property experts from Member States and observer delegations to have more in depth analysis and insight on the delegation process of new gTLDs. The Delegation stressed that the intention of the proposal was not to exclude all important geographical names from their delegation as gTLD, but to enhance the transparency of rules and delegating procedures of names containing a country name, a name of a region or a name of a capital. In this regard, the Delegation believed that there was some ambiguity as to how these rules had been applied in practice. Looking at one particular provision, it was not clear how the choice between the option of a direct consent from the relevant authority or the option of providing evidence that the authority remained silent would be exercised. The Delegation considered that the experience of the first round of the delegation of new gTLDs would be important to see whether intellectual property rights and country names could be preserved. Noting that not every country had the possibility to train their representatives to the GAC in intellectual property matters or to send an extra intellectual property expert, the Delegation believed that the SCT could provide useful advice to the ICANN GAC in recommending a path to develop the list of important geographical names and the rules of application procedures.

139. The Delegation of Germany, as a co-sponsor of the proposal, echoed the statement made by the Delegation of Hungary. The Delegation further reiterated that it did not support the study proposed by the Delegation of the United States of America and opposed to the merger of the two studies.

140. The Delegation of Portugal, co-sponsor of the proposal, noted that the protection of geographical indications and country names in the DNS should require special attention of this Committee in order to find, in the near future, common and appropriate solutions to address the current imbalances with regard to the protection of intellectual property rights in the DNS. The Delegation further echoed the previous statement and opposed to the merger of the two studies.

141. The Chair noted that that the SCT, at its next session, would revert to the two proposals.

AGENDA ITEM 8: ADOPTION OF THE SUMMARY BY THE CHAIR

142. The Delegation of Jamaica, summarizing the concerns expressed by some Member States, recommended that the document SCT/30/4 on country names and nation brands should be revised to describe the practice of the intellectual property offices and to

highlight their areas of convergence and divergence on this issue. The Delegation suggested that the revised document be prepared by the Secretariat and be made available to Member States for their written comments prior to the next session of the SCT.

143. The SCT approved the Summary by the Chair as presented in document SCT/33/5.

AGENDA ITEM 9: CLOSING OF THE SESSION

144. The Delegation of Japan, on behalf of Group B, thanked the Chair for his leadership, and also thanked the Secretariat and the interpreters for their hard work during the session. Regarding the DLT, the Group noted that the Committee held useful discussions on the proposal presented by the African Group. Therefore, in order to remove the obstacle faced by the Committee, and to achieve the goal, the Group considered that the current language of the DLT could address the relevant part of their concern. Furthermore, concerning the future sessions of the SCT, and for efficient and effective use of resources, the Group requested the Secretariat to take into account the experience of the two previous agendas in order to arrange the next session within a shorter period rather than five days.

145. The Delegation of Romania, on behalf of the CEBS Group, thanked the Chair for his efforts to advance the work of the SCT, and the Secretariat for its support throughout the session. The CEBS Group acknowledged the Committee for the interesting debates of this session, but regretted that no concrete outcome could be delivered. Regarding the draft DLT, the Delegation observed different understandings on what the commitment of the treaty actually meant. The Delegation expressed its surprise that for some delegations, such a commitment goes hand in hand with a proposal going against the purpose of the treaty: simplification and harmonization of design formalities, and with the announcement of possible further amendments to the provisions of the text, while the text was fairly mature to convene a diplomatic conference. Therefore, the Delegation wondered whether more discussions would lead the Committee closer or farther from the adoption of the treaty. Regarding the protection of country names and geographical indications, the Delegation believed that diversity of views expressed during the session, could not be ignored; and added that the Committee should rather pay attention to the practicalities of the issues raised in order to find common ground. Finally, the Delegation concluded by saying that in order to ensure effective work, the Secretariat should tailor the duration of meetings on the Agenda.

146. The Delegation of Pakistan, on behalf of the Asia and the Pacific Group, thanked the Chair for his hard work, commended the Secretariat and the interpreters for facilitating the work of the Committee. The Delegation stated that its Group participated in a constructive spirit to discussions and has consistently maintained the need for capacity building going hand in hand with the obligation to reach tangible results. The Delegation hoped to see progress on all issues reflecting diverse needs and priorities of all members, in an inclusive manner, in future sessions.

147. The Delegation of Nigeria, on behalf of the African Group, thanked the Chair for his leadership during the session. The Delegation thanked also the Secretariat and the interpreters. The African Group noted that the Committee had had a productive session, which allowed the African Group to provide an explanation of the disclosure requirements. The Delegation said that they answered the questions and believed that the subject was adequately discussed. However, the Delegation appreciated the preference expressed by the Delegation of the European Union and some other delegations to consider and evaluate the proposal. The Delegation looked forward to further discussions on this agenda item, and expressed its appreciation to the Delegations of Cuba, India, Iran (Islamic Republic of) and Pakistan and who supported the disclosure requirement. On the issue of technical assistance issue, the Delegation regretted that not much time had been spent discussing this critical aspect of the

proposed DLT which would be useful for African delegations and indeed for many developing countries. The Delegation said that it anticipated that more time be dedicated to discussions on this issue in more depth, at the next SCT. The Delegation observed that following their statement of the day before, many groups believed that the African Group had agreed to convene a diplomatic conference. Nevertheless and in order to avoid any misunderstandings, the Delegation clarified its position, and reiterated that the African Group wished a resolution on their request for an article on technical assistance before convening a diplomatic conference. On the matter of disclosure and technical assistance, the African Group stated that it remained open and ready to engage in discussions with Member States before the next General Assembly and the SCT. The Delegation said that they had expressed their availability repeatedly and hoped that Member States would express their readiness to engage with them. Regarding trademarks and geographical indications, the African Group observed the useful discussions on the proposals presented before the Committee, which permitted to clarify the complexity of this matter, and the different practices and interpretations of Member States. The Delegation encouraged further discussions in this regard.

148. The Delegation of China thanked the Chair and the Secretariat for their efforts in leading the session. The Delegation thanked also the interpreters for their work. It expressed the view that the work of the Committee was vital to all Member States. Like all other delegations, the Delegation had always actively and constructively participated in the discussion of the Committee. The Delegation expressed its hopes that the committee could make progress, as soon as possible, on some of the specific issues. Regarding the DLT, the Delegation stated that it would like to see the treaty adopted as soon as possible. As for the concerns raised by some countries, the Delegation stated that the Committee should give full consideration to the disclosure requirement. Moreover, the Delegation said that although this issue was relatively new, the Committee should give full consideration to the disclosure requirement, in order to accelerate the discussion of the DLT, and to find consensus. The Delegation reaffirmed its commitment to continue to actively and constructively participate in the work of the Committee.

149. The Delegation of the European Union, on behalf of the European Union and its member states, expressed their disappointment at the insistence by the African Group to include in the DLT new provisions on the disclosure requirement. The Delegation stated that the disclosure requirement was simply not compatible with the objectives that this committee had set itself in relation to reaching agreement on simplifying design registration formalities, in the framework of the DLT. This session had provided an opportunity for formal and informal dialogue with the African Group on the scope and objective of that proposal. The Delegation observed that nothing would allow the Committee to believe, that the SCT would be in a position to find common ground that would allow it to move forward towards the common objective of simplifying design registration formalities. The European Union and its member states stated therefore that they remained open to further informal dialogue with the African Group, during the thirty-fourth session of the SCT, in order to gain a better understanding of the respective positions. The Delegation stated that the Committee needed to take stock of the SCT/34 prospects for the DLT, so as to decide on its future course of action. The Delegation observed that the changing nature of the African Group's proposal, which was submitted to the Committee at its thirty-first session when the text was judged by all as being stable, placed the Committee in an awkward position. The Delegation stated that this new hurdle must be overcome before being able to reach a decision on the final destination of the work on the DLT. The Delegation commended the Chair and the Secretariat on the organization of a successful side-event on country names and nation branding, and looked forward to future proposals and the way forward on this issue. Finally, the Delegation said that the experience gained during the thirty-second and thirty-third session of the SCT had clearly demonstrated that a three-day meeting was amply sufficient for the work of the SCT, and would be most grateful to the Chair and the Secretariat to inform the Director General that the duration of future meetings should be adjusted accordingly. Finally, the Delegation thanked the Chair and the Vice-Chairs for their leadership provided during the debates and the Secretariat for its support.

150. The Delegation of Mexico thanked the Chair for his leadership during this session, and also thanked the Secretariat and the interpreters. The Delegation stated that it had followed with attention each debate on each Item of the Agenda. However, the Delegation underlined that it became clear during this session of the SCT that the Committee did not need five days to accomplish the work set forth in the agenda, and that this did not necessarily contribute to the progress of the debate. The Delegation regretted that the Committee had a very rigid view of the number of days scheduled for these meetings and observed that the Committee should have followed the work which had been programmed at the previous meeting when it found that three days was sufficient. The Delegation therefore requested the Secretariat to undertake efficient programming for future meetings of the SCT granting the necessary time for debate with the final objective to make the best possible use of resources.

151. The Delegation of Germany stated that it followed the interesting discussions in this SCT session and observed that the Committee had made progress on some important issues. The Delegation also followed the side-event on the protection of country names and nation branding which strengthened the mutual understanding of this issue among Member States. However, on the most important issue of the Agenda, the DLT, the Delegation noted and regretted, that the Committee was not able to reach consensus. The Delegation clarified that it did not consider itself as an endorsing state of the DLT, while other Member States would be acceptors of the DLT, but believed that the DLT was of benefit to all Member States. The Delegation stated that the Committee needed a common ground acceptable by all Member States. The Delegation recalled that, since the previous session, it had supported the convening of a diplomatic conference on the DLT but with the draft texts of November 2014. The Delegation further stated that these texts were an appropriate basis for negotiations of a formal treaty and a diplomatic conference. The Delegation added that the Committee was dealing with a formalities treaty, and not with a design law treaty on substantive issues or other legal aspects. The Delegation observed that the recently proposed paragraph on disclosure requirement did not comply with this precondition. In this context, the Delegation underscored that the draft text of the design law formalities treaty did not hinder national legislation on substantive design law or other legal aspects. Finally, the Delegation expressed thanks to the Chair, the Secretariat and the interpreters for the work of the session.

152. The Delegation of United Kingdom thanked the Chair for his energy and efforts to move the SCT Agenda forward. The Delegation echoed the views expressed by the Delegation of Japan on behalf of Group B, by the Delegation of the European Union, on behalf of the European Union and its member states, and by the Delegation of Germany. The Delegation expressed its disappointment with the current situation of the DLT which appeared, as never, far from a diplomatic conference. The Delegation stated that United Kingdom was ready to go to a diplomatic conference with the draft text of the thirty-second session of the SCT. The Delegation said that at the previous session, the Committee had listened with great interest and attention to the explanations of the African Group on their proposal. The Delegation noted with frustration, that the expert opinions from two different groups, on the same technical subject were so varied. The Delegation expressed the view that the Committee could continue to discuss this issue at the next session, and noted however, that a possible convergence would be very limited. Therefore, if at the next session the Committee could not find some common grounds, the Committee should revert back to the text as it was before the thirty-second session or maybe to start focusing on other topics. Finally, the Delegation fully supported the request made by the Delegation of Mexico, as well by some others delegations, and expressed its strong concerns with the planning of this meeting. The Delegation said it was always committed to an effective and efficient use of resources, not only by WIPO, but as well as of Member States. Therefore, based on the three-day meeting of the thirty-second session of the SCT, and based on the Agenda, the Delegation proposed a three-day meeting which proved to be sufficient. The Delegation would request the Secretariat to plan the next meeting accordingly.

153. The Delegation of Nigeria, speaking for itself, thanked the Chair and the Secretariat for their hard work during the session. Regarding the issue of industrial designs, the Delegation believed that this proposed DLT would be beneficial for all Member States if certain steps were reached. The Delegation stated that it was ready to negotiate and to move the process forward. The Delegation fully supported the African Group, and would like that the delegates understand that the inclusion of a disclosure requirement by the African group is to meet its national priorities. The Delegation believed that the draft DLT should leave some policy space to delegations; and a disclosure requirement would meet some eligibility tests for the African intellectual property offices. The Delegation regretted that many delegations such as the European Union and Group B countries were repeating that the Committee was going away from the objective of the DLT, while the African Group was supporting the valid interest of a whole group of countries, namely 54 Member States. The Delegation of Nigeria and the African Group remained open to meet with Member States who wished to discuss any Agenda Item of the SCT. The Delegation looked forward to productive conclusions of the SCT Agenda items.

154. The Delegation of Algeria congratulated the Chair for his excellent leadership during the meeting and thanked the Secretariat. The Delegation expressed its support for the statement made by the Delegation of Nigeria on behalf of African Group and on its own behalf. The Delegation observed that the SCT may not have had concrete results in the form of recommendations, but had had interesting substantive discussions, particularly on the African Group's proposal. The Delegation expressed its astonishment that this proposal should still be perceived as a way of delaying a progress, which was certainly not the case. The Delegation believed that the Committee could move forward with the DLT, if it so wished, if it expressed its commitment to discuss the proposal, and indeed to review some elements of that proposal. The Delegation, however stated that all Member States must understand that the proposal was in response to the national interests of all and, that it was not a question of creating new obligations, but simply to opening the door to those countries wishing to have a disclosure procedure, which was not binding but simply a possibility. The Delegation hoped the Committee would better understand what the goal was and that some progress could be made.

155. The Delegation of South Africa aligned itself with the statement made by the Delegation of Nigeria on behalf of the African Group. In this regard, the Delegation considered that the disclosure requirement was an important requirement, and commended the discussions taken place at the SCT. The Delegation looked forward to further discussions, as it believed that when the Committee would reach a consensus on divergent issues, it would be for the benefit of all.

156. The Chair closed the session on March 19, 2015.

[Annexes follow]



SCT/33/5
ORIGINAL: ENGLISH
DATE: MARCH 19, 2015

Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications

**Thirty-Third Session
Geneva, March 16 to 20, 2015**

SUMMARY BY THE CHAIR

adopted by the Committee

AGENDA ITEM 1: OPENING OF THE SESSION

1. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the thirty-third session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.
2. Mr. Marcus Höpferger (WIPO) acted as Secretary to the SCT.

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

3. Mr. Adil El Maliki (Morocco) was elected Chair. Mr. Imre Gonda (Hungary) and Ms. Günseli Güven (Turkey) were elected Vice-Chairs of the Committee.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

4. The SCT adopted the draft Agenda (document SCT/33/1 Prov.2).

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-SECOND SESSION

5. The SCT adopted the draft Report of the thirty-second session (document SCT/32/6 Prov.).

AGENDA ITEM 5: INDUSTRIAL DESIGNS

6. The Chair noted that delegations held useful discussions on the proposal presented by the African Group at the thirty-second session of the SCT. He concluded that, overall, the situation remained unchanged and that the Design Law Treaty (DLT) would be considered at the next sessions of the General Assembly and the SCT.

AGENDA ITEM 6: TRADEMARKS

7. An exchange of views took place on the revised proposal by the Delegation of Jamaica.
8. The Chair noted that the SCT would revert to that proposal at its next session. Furthermore, he requested the Secretariat to revise document SCT/30/4 to render it more descriptive of intellectual property office practices in the area of the protection of country names, for consideration at the next session of the SCT.
9. The SCT considered document SCT/33/4 Rev. and the Secretariat was requested to keep Member States informed of future developments in the Domain Name System.

AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS

10. An exchange of views took place on the proposals contained in documents SCT/31/7 and SCT/31/8 Rev.3.
11. The Chair noted that the SCT, at its next session, would revert to the two proposals.

AGENDA ITEM 8: SUMMARY BY THE CHAIR

12. The SCT approved the Summary by the Chair as contained in the present document.

AGENDA ITEM 9: CLOSING OF THE SESSION

13. The Chair closed the session on March 19, 2015.

[Annex II follows]



SCT/33/INF/1
ORIGINAL: FRANCAIS/ANGLAIS
DATE: 19 MARS 2015 / MARCH 19, 2015

Comité permanent du droit des marques, des dessins et modèles industriels et des indications géographiques

**Trente-troisième session
Genève, 16 – 20 mars 2015**

Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications

**Thirty-Third Session
Geneva, March 16 to 20, 2015**

**LISTE DES PARTICIPANTS
LIST OF PARTICIPANTS**

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prepared by the Secretariat*

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* Based on a decision of the Standing Committee, the European Communities were accorded member status without a right to vote.

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