

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

**Thirty-Fourth Session  
Geneva, November 16 to 18, 2015**

### **REPORT**

*adopted by the Standing Committee\**

### **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-fourth session, in Geneva, from November 16 to 18, 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, Algeria, Argentina, Australia, Austria, Belarus, Bhutan, Brazil, Burundi, Canada, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d’Ivoire, Czech Republic, Denmark, Democratic People’s Republic of Korea, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Latvia, Lebanon, Libya, Lithuania, Luxembourg, Malaysia, Mexico, Monaco, Morocco, Mozambique, Myanmar, Nepal, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, Turkey, Turkmenistan, Ukraine, Uruguay, United Kingdom, United States of America, Viet Nam, Zimbabwe (89). The European Union was represented in its capacity as a special member of the SCT.

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\* This Report was adopted at the thirty-fifth session 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), Centre for International Intellectual Property Studies (CEIPI), Health and Environment Program (HEP), International Center for Trade and Sustainable Development (ICTSD), Internet Corporation for Assigned Names and Numbers (ICANN), International Federation of Intellectual Property Attorneys (FICPI), Intellectual Property Owners Association (IPO), International Trademark Association (INTA), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), Knowledge Ecology International, Inc. (KEY), Organization for an International Geographical Indications Network (origIn), Third World Network Berhard (TWN) (14).
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. The Chair of the SCT (Mr. Adil El Maliki, Morocco) opened the thirty-fourth 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: ADOPTION OF THE AGENDA**

9. The SCT adopted the draft Agenda (document SCT/34/1 Prov.3).

#### **AGENDA ITEM 3: ADOPTION OF THE REVISED DRAFT REPORT OF THE THIRTY-THIRD SESSION**

10. The SCT adopted the revised draft Report of the thirty-third session (document SCT/33/6 Prov.2).

#### *General Statements*

11. The Delegation of Greece, speaking on behalf of Group B, noted with satisfaction that the session of the SCT came after the successful conclusion of the forty-seventh WIPO General Assembly, which directed the SCT to examine the different systems for protection of geographical indications within its current mandate and covering all aspects. The General Assembly also decided that the text of the basic proposal for the Design Law Treaty (DLT) should be finalized by the SCT at its thirty-fourth and thirty-fifth sessions in order to convene a diplomatic conference for the adoption of the DLT at the end of the first half of 2017, provided that the discussions on technical assistance and disclosure requirements would be completed during those sessions. Reserving the right for further elaboration under each agenda item, Group B expected that in view of the direction given by the General Assembly decision and the limited duration of the current SCT session, priority would be given to the provisions on technical assistance and the disclosure requirement, for whose consideration a pragmatic

approach would be welcome. Concerning technical assistance, Group B noted that WIPO had been successfully delivering technical assistance and would continue to do so within its mandate, irrespective of whether or not a provision was included in a treaty. With regard to geographical indications, Group B looked forward to a constructive discussion.

12. The Delegation of Nigeria, speaking on behalf of the African Group, considered that industrial designs, as a valuable and increasingly dynamic component of the intellectual property ecosystem, should be given priority. In that context, the African Group reiterated its commitment to the principle of disclosure of the source and original specific resources that could have impacted the ornamental appearance of an industrial design. As sovereign Member States of WIPO, countries could include as part of the design eligibility criteria, elements that were deemed important to complete the formalities for protection of industrial designs within their jurisdiction. The African Group thus remained committed to the negotiation of a DLT, offering non-mandatory protection for different forms of knowledge and intellectual activity that might be involved in the ornamentation of industrial designs. The Group was also committed to a DLT with a functional provision that catered to the capacity building and technical assistance needs of the intellectual property frameworks of developing and least developed countries, in order to ensure that they could effectively implement and benefit from the instrument. The Group welcomed the direction given by the 2015 General Assembly on the DLT and expressed its readiness for a constructive resolution of the outstanding issues, which would enable the SCT to convene a diplomatic conference within the time frame envisaged. The African Group also expressed its readiness to engage constructively on the other equally important aspects of the SCT work related to trademarks and geographical indications.

13. The Delegation of Romania, speaking on behalf of the Group of Central European and Baltic States (CEBS Group), reiterated its commitment to the adoption of a DLT. Although the decision of the General Assembly laid out a clear roadmap for achieving that goal, it was not a straightforward one, as the SCT needed to complete its discussions on technical assistance and the disclosure requirement prior to the convening of the diplomatic conference. The Delegation hoped that in addressing those remaining issues, all delegations would keep in mind the objective of the treaty, which was to harmonize and simplify design law registration formalities for the benefit of applicants and national intellectual property offices. The Delegation added that in order to be effective, the Committee needed to work in a positive and constructive spirit. The CEBS Group also expressed its willingness to contribute to the debates on trademarks and the protection of country names, as well as on the different systems for the protection of geographical indications. The Delegation reiterated its support to the proposal made by a group of countries in relation to geographical indications and the Domain Name System (DNS). In the view of the Delegation, the connection between the two topics deserved to be further examined by the SCT, in order to ensure that holders of geographical indications were adequately protected against infringing domain names.

14. The Delegation of Brazil, speaking on behalf of the Latin America and Caribbean Group (GRULAC), expressed its continuous support to the inclusion of provisions on technical assistance in the DLT and the strengthening of national capacities regardless of their nature, to the extent that such provisions could ensure effective cooperation for developing and least developed countries. Many countries in the Latin American and Caribbean region would undoubtedly require such support to implement the treaty. In addition, the Delegation highlighted the importance of the ongoing work of the SCT on the protection of country names. It recalled that, pursuant to a request made at the twenty-seventh session of the SCT, the Secretariat had prepared a study to determine possible best practices for the protection of country names against registration as trademarks or elements of trademarks. The results of the study, submitted to the twenty-ninth session of the SCT, indicated that there was a lack of internationally

consistent protection for country names. At its thirtieth session, the SCT had decided to continue working on that issue and invited all delegations to submit written proposals to the Secretariat. Thereafter, the draft text of a Joint Recommendation Concerning the Protection of Country Names Against Registration and Use as Trademarks (document SCT/31/4) was presented to the Committee at its thirty-first session and a revised version (SCT/32/2) was submitted at the thirty-second session. The Joint Recommendation could guide Member States in the examination of applications for trademark registration in order to promote a coherent and comprehensive treatment of that issue. The Delegation recalled that country names provided a valuable opportunity for nation branding schemes, bringing value through the use of trademarks, especially in the case of developing countries. The Delegation reaffirmed its support for the discussions and further work on the protection of country names. With regard to geographical indications, GRULAC attached great importance to a balanced treatment of the issue, in line with the mandate received to examine the different systems for the protection of geographical indications.

15. The Delegation of India, speaking on behalf of the Asia-Pacific Group, said that intellectual property had gained significance in the current interconnected and interdependent world. It was therefore important that the contemporary intellectual property system be responsive to the diversity of needs and the development of all Member States. A fair intellectual property system should strive for equilibrium between the interests of the right holders and the protection and promotion of the larger public welfare, for inclusive universal progress. A balanced outcome of the meeting was vital to ensure that all countries benefited from intellectual property, irrespective of their level of economic development. Considering that technical implementation of a treaty should be accompanied with augmented capacity to carry out that obligation, the Delegation said that the implementation of the proposed treaty would entail amendment of national laws and require new infrastructures to deal with more applications, enhanced national capacity, and developing legal skills to manage the increased number of requests. The proposed treaty should thus include adequate provisions on capacity building to help countries meet their obligations. The Group, therefore, strongly supported the inclusion of an article on technical assistance in the body of the proposed DLT in order to suitably reflect that important issue in the treaty. The Delegation said that a consensus on this matter should be reached and pointed out the need for an international action to prevent the undue registration or use of country names as trademarks. The Asia-Pacific Group supported the proposal made by the Delegation of Jamaica for a future adoption of a Joint Recommendation by the SCT as well as the proposal made by the Delegation of the United States of America to develop a survey on existing national geographical indications regimes, in order to enhance the understanding of the common and different approaches to geographical indications protection adopted by various Member States. In addition, the Asia-Pacific Group expected progress towards consensus and acceptance of the protection of country names and geographical indications. The Delegation committed to contributing to all agenda items and looked forward to constructive discussions and productive results in the SCT deliberations.

16. The Delegation of China said that in October 2015, the WIPO General Assembly had made progress towards the convening of a diplomatic conference on the DLT and had provided clear directions to the SCT. Therefore, the current SCT session played a vital role and the Delegation hoped that by working effectively, the Committee would make further progress on the provisions concerning technical assistance, the disclosure requirement and other key issues. The Delegation called upon all parties to show flexibility, strive to understand and respect the concerns of other members and to make the draft DLT more flexible. By including a reservation clause, the treaty would be rendered more widely accepted and influential. The Delegation said that it would actively

and constructively participate in the discussions concerning all items, including the Draft Joint Recommendation proposed by the Delegation of Jamaica.

17. The Delegation of the European Union, speaking on behalf of the European Union and its member states, welcomed the decision of the General Assembly to convene a diplomatic conference for the adoption of a DLT at the end of the first half of 2017, provided that the discussions on technical assistance and the disclosure requirement would be completed during the thirty-fourth and thirty-fifth sessions of the SCT. The Delegation called on all delegations to approach the discussions on those two remaining items constructively, in order to find consensus and finally to pave the way for the holding of the diplomatic conference. In relation to geographical indications, the Delegation believed that the discussion should take into account the decision by the General Assembly directing the SCT to examine the different systems of protection for geographical indications within its current mandate and covering all aspects. In that context, the Delegation referred to document SCT/31/8 Rev.4 proposing to conduct a study on geographical indications and domain names which was an important element and on which the work of the Committee could benefit both Member States and users.

18. The Delegation of Iran (Islamic Republic of) associated itself with the statement made by the Delegation of India on behalf of the Asia-Pacific Group, and reaffirmed its support to the work of the SCT in relation to industrial designs. The Delegation said that this was a norm-setting endeavor which needed to strike a proper balance between costs and benefits. The study prepared by the Secretariat on the potential impact of the work of the SCT on industrial design law and practice could offer a good basis for understanding where the balance stood. It was noteworthy that the study had acknowledged requirements for administrative assistance, building legal skills, training and infrastructure investment in developing and least developed countries. The mandate given by the General Assembly in 2015, had explicitly recognized the importance of including appropriate provisions on technical assistance and capacity building for developing countries and LDCs. The inclusion of these provisions in the main body of the DLT would ensure certainty, predictability and strike a balance between rights and obligations of the parties. It would also contribute to enhancing national capacities in developing countries in the area of industrial design. Such an approach would help those countries to implement the obligations and enjoy the benefits deriving from the proposed treaty. The Delegation supported the proposal made by the African Group for the inclusion in Article 3 of the draft DLT of a mandatory disclosure requirement of traditional knowledge and traditional cultural expressions in industrial design applications, in order to prevent the misappropriation of traditional designs. The Delegation believed that DLT outstanding issues dealing in particular with Articles 3 and 21 needed to be settled before the convening of the diplomatic conference in 2017. Regarding the protection of country names against undue registration or use as trademarks, an issue that the SCT had discussed since 2009, the Delegation noted that the compilation of national laws and practices contained in a previous study produced by the International Bureau of WIPO, indicated that there was a need for action to prevent undue registration or use of country names as trademarks. The Delegation therefore supported the proposal presented by Jamaica for the development and adoption of a Joint Recommendation.

19. The Representative of HEP considered that intellectual property contributed to development by enabling the protection of innovations in the areas of trademarks, industrial designs and geographical indications. Regarding the convening of a diplomatic conference for the adoption of a DLT in the first half of 2017, the Representative noted that this was subject to settling the remaining issues in the SCT. The implementation of the future treaty would strengthen national capacities through technical assistance and the Representative hoped that the discussions at the current session of the SCT would lead to consensus among all Member States.

#### **AGENDA ITEM 4: INDUSTRIAL DESIGNS**

##### *Industrial Design Law and Practice – Draft Articles and Draft Regulations*

20. Discussion was based on documents SCT/32/2, SCT/33/3 and SCT/34/3.

21. The Representative of CEIPI stated that CEIPI attached great importance to the draft DLT leading to a successful diplomatic conference, not only because the DLT would complete the existing treaties in the field of patents and trademarks, namely the Patent Law Treaty (PLT), the Trademark Law Treaty (TLT) and the Singapore Treaty, but also and above all, because the DLT would be a precious aid for design creators around the world, particularly for those in developing countries. For these reasons, it seemed essential to well prepare the field for a diplomatic conference, resolving as far as possible the problems that had been a barrier to its convening. Referring to the proposal of the African Group, as reflected in Article 3(1)(a)(ix) in document SCT/33/2, the Representative pointed out that, although the proposal referred to a requirement of disclosure for Contracting Parties of the DLT, several statements of the African Group had underlined that the aim was only to allow Contracting Parties to provide for a disclosure requirement in their legislation. The Representative therefore considered that the issue at stake was the ability - and not the obligation – for Contracting Parties to provide for a disclosure requirement. In his opinion, the aim of the proposal could be achieved without including it under Article 3 for two reasons based, on the one hand, on a precedent in the field of patent law and, on the other hand, on the legal nature of the disclosure requirement. Referring to the precedent in the field of patent law, the Representative recalled that it had been agreed, at the beginning of the Diplomatic Conference on the PLT, that the disclosure requirement would not be addressed in that Conference and that the PLT would not say anything about it. This had not prevented countries providing for a disclosure requirement in their legislation, such as Switzerland, from joining the PLT. The Representative was of the view that what applied to patents, where the disclosure requirement was particularly important, also applied to industrial designs. As regards the legal nature of the disclosure requirement, the Representative said that the aim of the requirement was to allow the competent authority to ensure that, when protection was sought for a design involving a traditional knowledge (TK), traditional cultural expression (TCE) or genetic resource (GR), such TK, TCE or GE had not been obtained in violation of the country of origin's rules concerning access to it. For instance, if the country of origin required the equitable sharing of benefits resulting from the commercial use of the design, the obligation to disclose the source would allow the competent authority to check whether this requirement had been fulfilled. If not, there would be an illicit appropriation. The disclosure requirement was therefore close to what could be called the "right to the design" and aimed at ensuring that the right was not granted to a person not entitled to it. From the viewpoint of the Representative, this concerned a substantive issue relating to the requirements to grant a valid registration. In this respect, the disclosure requirement was included in the obligation to provide certain information under Rule 2(1)(x), as contained in document SCT/33/3, according to which a Contracting Party could require that an application contain an indication of any prior application or registration, or other information, of which the applicant was aware, "that could have an effect on the eligibility for registration of the industrial design". The Representative believed that the future version of the footnotes under Rule 2 could usefully specify this point. The Representative concluded that the precedent of the PLT and the legal nature of the disclosure requirement led to the conclusion that the lack of inclusion of the proposed provision in Article 3 would not oblige any country whose legislation contained a disclosure requirement to change its legislation, nor would it prevent countries wishing to introduce such requirement in their legislation from doing so.

22. The Delegation of Nigeria, speaking on behalf of the African Group, acknowledging that there was no resistance, in principle, to a provision on technical assistance, recalled that the approach to the provision remained open. Pointing out that capacity building and technical

assistance would help developing countries and LDCs to face the structural and infrastructural burdens in implementing the treaty, the Delegation stated that the African Group was strongly in favor of an article on technical assistance in the draft DLT. This would not be a new rule in the Organization, as there was already a precedent for an article on technical assistance in the PCT. From the Delegation's viewpoint, an article would be supported by an assembly, which would oversee the implementation of the provision, and would give stronger guarantees to delegations.

23. The Delegation of India, on behalf of the Asian and Pacific Group, strongly supported the inclusion of an article on technical assistance in the main body of the proposed DLT.

24. The Delegation of Iran (Islamic Republic of), lending its support to the statements made by the Delegations of India, on behalf of the Asian and Pacific Group, and Nigeria, on behalf of the African Group, expressed its support for the inclusion of an article on technical assistance and capacity building in the main body of the treaty.

25. The Delegation of the United States of America recalled that WIPO already provided technical assistance and that, in the context of the DLT, even if there were no resolution or article, technical assistance would be encompassed in WIPO's general operations. However, to the extent that it was felt that some language on technical assistance was needed, the Delegation was of the view that a resolution provided flexibility, as well as the earliness in which technical assistance could be provided. Noting that nobody had reported that a resolution or an agreed statement had not been successful in the analogous treaties, such as the Singapore Treaty and the PLT, which were the closest treaties to the DLT, the Delegation concluded that a resolution or an agreed statement would be preferable and more effective than an article.

26. The Delegation of the European Union, speaking on behalf of the European Union and its member states, stated that it remained flexible with respect to the form of the technical assistance provision. Underlining its support for the effective delivery of technical assistance in implementing the DLT, the Delegation considered that whichever form was agreed should be geared to the requirements of end-users.

27. The Chair, noting that all delegations were in favor of technical assistance, pointed out that there were three different approaches regarding its form. A group of countries had expressed support to a specific article on technical assistance, although not necessarily based on the current wording. Some delegations, indicating that WIPO already carried out technical assistance activities, had expressed their preference for a resolution on technical assistance, as it appeared in other treaties. Other delegations had expressed their flexibility to either approach. The Chair then invited the Delegation of Nigeria, on behalf of the African Group, to clarify the objective of its proposal reflected in Article 3(1)(a)(ix) of document SCT/33/2.

28. The Delegation of Nigeria, speaking on behalf of the African Group, clarified that its proposal concerned a non-mandatory disclosure requirement. Underlining that its initial concern related to Article 3, which provided a finite list of elements for the protection or registration of industrial designs, the Delegation explained that African countries wished to include, as part of the optional elements, a disclosure requirement for the use of GRs, TK and TCEs in a design for which protection was sought, as some African countries already had this provision in their laws and many countries, notably within ARIPO, were exploring the inclusion of such provision in their laws.

29. The Delegation of Mozambique, recalling that the proposed DLT had been compared to the PLT as a formalities treaty, pointed out that this comparison had some limits. The Delegation considered that the draft DLT ventured much further into a substantive territory than the PLT, as the PLT did not prevent Contracting States from requiring disclosure of origin in applications in the way the draft DLT proposed to do. The PLT did limit the form and content of

applications to be no more as required under the PCT, but Article 2 of the PLT stated explicitly that nothing in the treaty or the regulations was intended to be construed as prescribing anything that would limit the freedom of a Contributing Party to prescribe such requirements of the applicable substantive law relating to patents as it desired. Stressing that there was a similar language in Article 27 of the PCT and observing that there was no comparable article in the draft DLT, the Delegation raised concerns about the closed list under Article 3 of the DLT, as there was no explicit recognition of its formal limitation. Referring to the fact that, under the PCT or the PLT, countries like Switzerland had been able to have a disclosure of origin requirement in their national laws, the Delegation recalled that the Delegation of Switzerland had sought to amend the PCT on more than one occasion to make it explicitly clear that a disclosure of origin could be required. The difficulty in getting that amendment into the PCT raised concerns about not having the ability to require disclosure of origin in the DLT. As the DLT was designed to minimize requirements that countries could impose on an applicant to make it easier to obtain designs globally, more design applications could consequently be expected in foreign countries. While this could be positive for applicants and the system overall, the Delegation considered that this could create problems, particularly for developing countries, as protectable designs could be based on, and use, TCEs, TK and biological and genetic resources. In the view of the Delegation, by providing for a closed list of requirements in Article 3, the DLT placed substantive limits on countries in relation to design registration and would not allow countries to require an applicant to disclose the origin or the source of any TK, TCEs or GRs used in creating the product covered by design. The Delegation considered that design protection was powerful and that the ability to require disclosure of origin was a critical flexibility to be retained by sovereign countries in order to ensure that rights were not granted on designs that could misappropriate domestic and indigenous creativity. The Delegation also informed the SCT that an increasing number of African countries' laws required the disclosure of origin in designs and other types of intellectual property rights and that the ARIPO Swakopmund Protocol had entered into force on May 11, 2015. The Delegation explained that Botswana, Gambia, Liberia, Malawi, Namibia, Rwanda and Zimbabwe had already deposited their instruments of ratification and that several other countries were expected to do so. Finally, while stressing the importance of having the flexibility to require disclosure of origin, the Delegation reiterated that this was not a mandatory requirement, as the aim was to leave policy space for countries wishing to require such disclosure of origin.

30. The Delegation of Nigeria, on behalf of the African Group, proposed to replace the term "shall" by "may" in the text of Article 3(1)(a)(ix) put forward by the African Group at the thirty-second session of the SCT.

31. The Delegation of Romania, speaking on behalf of the CEBS Group, reiterated the commitment of the CEBS Group to the adoption of the DLT, stressing the fact that making intellectual property more accessible to users by simplifying formalities and ensuring a higher level of predictability with regards to formalities in other countries should be a common goal. Referring to the African Group proposal, the Delegation recalled that, for the CEBS Group, the disclosure requirement of GRs, TK and TCEs was not compatible with the purpose of the treaty, which aimed at harmonizing and simplifying industrial design registration formalities. Moreover, this requirement was considered as a substantive requirement, which would have no place in a treaty on formalities. The Delegation invited all delegations to focus on the mandate given by the General Assembly and to work towards the convening of a diplomatic conference in 2017.

32. The Delegation of the European Union, on behalf of the European Union and its member states, said that the European Union and its member states maintained that the proposal concerning a disclosure requirement, as reflected in the bracketed language of Article 3 of the DLT, was not relevant to design registration formalities and to the alignment and simplification of those formalities, which was the purpose of the DLT. The Delegation wished to distinguish between the patent system and the discussions on a disclosure requirement in patent applications, which would be continued in the Intergovernmental Committee on



Intellectual Property and Genetic resources, Traditional Knowledge and Folklore (IGC) next year, from the industrial design system, which protected the appearance or the aesthetical aspect of a product. In the view of the Delegation, proponents still had not made the case on how disclosure of GRs, TK and TCEs could be relevant in the design system. The Delegation concluded by adding that the proposed disclosure requirement was a substantive requirement, whereas the DLT was about formalities in relation to design registration.

33. The Delegation of Greece, speaking on behalf of Group B, pointed out that the increase of the importance of industrial designs could not be denied, as evidenced by the recent expansion of the Hague System. Therefore, it was critical for the users of the intellectual property system to avoid further delay in the adoption of the DLT, as this treaty would achieve the simplification of procedures. Considering that there had been no technical and concrete explanation of how GRs, their derivatives and their associated TK and TCEs could be linked with the subject matter of the treaty, namely industrial designs, the Delegation stated that Group B invited the proponents to reconsider the proposal on the disclosure requirement, so as to go back to the track and to let all delegations be engaged in the negotiation again, respecting the objective of the exercise. The Delegation concluded that Group B was looking forward to continuing the discussions, with the goal of finalizing the text and reaching an agreement on the convening of a diplomatic conference at the end of the first half of 2017.

34. The Delegation of Japan lent its support to the statement made by the Delegation of Greece on behalf of Group B. In its view, the treaty could benefit not only large companies in developed countries, but also SMEs and individual creators in developing countries, by reducing their burdens. As it did not see any need to include a disclosure requirement in the treaty in the light of its objective, the Delegation expressed the hope that the proposal on the disclosure requirement would be withdrawn at the current session of the SCT, so as to enable SCT members to focus their attention on the simplification of application procedures. The Delegation concluded by announcing that it wished to be actively involved in the discussions in a faithful and constructive manner, so as to make the treaty a reality for users worldwide.

35. The Delegation of Georgia aligned itself with the position of the CEBS Group in support for the provisions of the DLT. The Delegation expressed the hope that the decision of the General Assembly would be fulfilled, that the text would be finalized and that a diplomatic conference on the DLT would be convened.

36. The Delegation of the Republic of Korea, considering that the proposal of the African Group regarding a disclosure requirement dealt with a substantive requirement, pointed out that it was beyond the scope and spirit of the DLT. Consequently, the Delegation did not support the inclusion of the proposed provision in the draft DLT.

37. The Delegation of the United States of America, thanking the Delegations of Nigeria, on behalf of the African Group, and of Mozambique for their explanations, said that it felt still unsure about the purpose and practical implications of the proposed provision, which raised three questions. First, the Delegation asked how the provision would work in practice and whether applicants would need to figure out if the provision was triggered and, if so, whether they would be required to submit information about locations and details. The Delegation also asked whether this could be a cause of invalidity for the design rights. Secondly, as in the United States of America and in other places, design related to the ornamental appearance and not to the material of which the product was made out, the Delegation requested information about the tie between design and TK, TCEs and GRs. Thirdly, the Delegation wondered whether the proposed provision was intended to check whether TCEs, TK or GRs had been accessed correctly or to simplify the work of the examiner by providing important information.

38. The Delegation of Spain said that, in its view, the proposed provision went beyond the scope of formalities and fell outside the contents of the rest of the treaty. While it understood the concerns raised by countries wishing to introduce the disclosure requirement in the draft DLT, the Delegation considered that this treaty was not the proper place to introduce it.

39. The Delegation of Hungary requested further explanations on the implementation of Section 19(3)(c) of the Swakopmund Protocol in the design registration procedures of Contracting States.

40. The Delegation of Canada stated that it shared the concerns of other delegations with respect to the recent addition of a new language on the disclosure of the origin of GRs, TK and TCEs in industrial design applications under the DLT. In its view, these issues should be negotiated within the WIPO IGC, and not at the SCT. Indicating that members had not yet achieved consensus that a disclosure requirement was the most appropriate means of addressing these issues in a multilateral context, the Delegation believed that including this requirement in a specific WIPO treaty would be premature at this stage. In addition, the Delegation was of the view that the disclosure requirement constituted a substantive requirement, affecting the registrability of designs, rather than a formality. Including such a requirement in the DLT was therefore inappropriate in the context of negotiations aiming at harmonizing formalities. Finally, given that the purpose of WIPO treaties was to codify existing norms, the Delegation added that, as disclosure requirements were not widespread in national design laws, the inclusion of such provision in the DLT would be inappropriate.

41. The Delegation of Mozambique reiterated that what was sought was the ability to require disclosure of origin in national law, but not the obligation for countries that did not desire to require such disclosure to do so. The Delegation expressed the readiness of the African Group to change the text to make this clear. Stating that the DLT, as a formalities treaty, should not interfere with substantive conditions for design protection, the Delegation considered that without that option in Article 3, there would be such interference. In its view, countries should have the sovereign right to request disclosure of origin and to choose how to do this, for instance, by requiring information.

42. The Delegation of Iran (Islamic Republic of) lent its support to the proposal made by the African Group for the inclusion of a mandatory disclosure requirement in Article 3 of the draft DLT. The Delegation believed that a disclosure requirement was a formality issue, which fell within the scope of the treaty. The Delegation further stressed the importance of protecting TK and TCEs in industrial designs, as well as the importance for developing countries of having something to their benefit in this treaty.

43. The Delegation of Greece, speaking in its national capacity, said that it aligned itself with the statement made by Group B on this issue. Referring to the statement made by the Delegation of Mozambique in favor of introducing a non-mandatory disclosure requirement, the Delegation was of the opinion that all elements in Article 3 were of an optional nature. The Delegation pointed out that Rule 2(1)(x) provided an option for a Contracting Party wishing to require disclosure of origin to request the applicant to provide information in its application. Indicating that, in design law, disclosure was satisfied through the representation of the design, the Delegation failed to see why a further disclosure requirement should be introduced in Article 3.

44. The Delegation of Mozambique clarified that it did not suggest the introduction of a requirement for disclosure of origin, but the inclusion, in the closed list under Article 3, of the ability to require disclosure of origin. Noting that the list of items under Article 3 was optional, the Delegation stressed the fact that it was nonetheless a closed list, as a Contracting Party could require that an application contain some or all of them, but not more. The Delegation's concern related to the fact that this provision put a substantive limit on what countries could

require applicants to disclose in relation to the registrability of designs and on determining whether or not a design should be protected because it could include TK, TCEs or GRs. The Delegation reiterated that the proposal sought policy space and flexibility.

45. The Delegation of Israel, aligning itself with the statements made by the Delegations of Canada and of Greece, on behalf of Group B, said that the proposed paragraph should not be discussed as part of the DLT.

46. The Delegation of China, stating that it understood the concern of the African Group, thanked the Delegations of Mozambique and Nigeria for their explanations and for their flexibility with respect to the optional nature of the proposed text. While considering that the current language of the proposed text could be improved, the Delegation of China wondered which countries had already included this requirement in their national laws.

47. The Delegation of Switzerland, referring to the statement made by the Representative of CEIPI, confirmed that it had already a disclosure of source requirement in its national patent law. However, the Delegation said that it did not see the link between this subject matter and the DLT. Reiterating its opposition to the proposal by the African Group, the Delegation pointed out that this subject could be covered by Rule 2(1)(x). The Delegation believed that further reflection on this issue was needed and hoped that a solution regarding this rule would be found.

48. The Delegation of Greece asked the Delegations of Mozambique and Nigeria why Rule 2(1)(x) would not satisfy Contracting Parties requesting a disclosure of origin.

49. The Chair suggested holding informal consultations after listening to the Delegations in plenary session.

50. The Delegation of Greece, on behalf of Group B, supported by the Delegation of the European Union, on behalf of the European Union and its member states, indicated that it would prefer to have informal sessions only to undertake a drafting exercise.

51. The Delegations of India and Nigeria expressed the view that informal sessions would be productive for discussing the matter further and bridging the gap.

52. The Delegation of Mozambique, in reply to the Delegation of Greece on Rule 2 of the draft Regulations, said that its understanding was that Rule 2 had not been drafted with disclosure of origin in mind and would not be read by certain member countries as covering a disclosure of origin requirement. The Delegation observed that Rule 2 was problematic on its own because Article 3 of the draft Articles comprised a closed list, whereas Rule 2 opened wide that list. The Delegation stated that it was unclear how that should be interpreted, in view of the fact that Article 23 of the draft Articles provided that, in the case of conflict, the treaty would prevail over the regulations. For all these reasons, the Delegation said that it would prefer to have a provision in Article 3.

53. The Delegation of Canada requested the Secretariat to confirm its understanding of the relationship between Article 3 and Rule 2, namely that, while the former did provide for a closed list of elements that might be included in a design application, the article itself did not contain the full list of elements and must be read together with Rule 2.

54. The Secretariat confirmed that Article 3(1)(a)(x) had to be read in conjunction with Rule 2, which expanded the list of elements set forth in Article 3. Moreover, the capping provision in Article 3(2) also covered the elements in Rule 2. The Secretariat recalled that this structure was intentional, to avoid that the article could lock the membership in a situation that might be no longer desirable in the future.

55. The Delegation of the United States of America reiterated its questions on how the provision proposed by the African Group would work in practice and how GR, TK and TCE related to the ornamental features of an article. Moreover, the Delegation queried about the policy and rationale of the proposal.

56. The Delegation of Nigeria, speaking on behalf of the African Group, explained that the proposed provision was to give policy space to countries in the African region that wished to have this element as part of the eligibility criteria in their jurisdictions. The Delegation pointed out that many African countries were exploring means to ensure that this was reflected in their national laws. Therefore, the African Group believed that if a country had deemed it important to have this element in its national law, the Committee had to follow the stipulations put forward by those Delegations to meet the requirements of such provisions in their laws. The Delegation also underlined that this provision was neither a mandatory requirement nor a provision to protect GRs, TK and TCEs in international law, but an option to require information regarding this.

57. The Delegation of Mozambique said that requiring disclosure of origin should remain a matter of the national substantive law, and that it would be for each country to determine how the requirement would work in practice, depending on how the substantive law was put into practice. Regarding the questions about genetic resources, the Delegation stated that the scope of intellectual property protection had expanded and that Member States' understandings of the ways in which their national resources could be misappropriated was still evolving and should not be frozen prematurely by the DLT. The Delegation observed that, just as countries might take the view that a design created through illegal or immoral activities should not be granted, countries could also decide not to grant a design where a disclosure of origin requirement was not met.

58. The Delegation of Greece, on behalf of Group B, took note of the explanations provided by the Secretariat on Article 3 and Rule 2. Quoting Note R2.06, which said that item (x) of Rule 2(1) enabled an office to obtain information that could affect the registrability of the industrial design, the Delegation stated that it still failed to see why an indication of the disclosure of origin could not be accommodated in Rule 2(1)(x).

59. The Delegation of South Africa explained that, in South Africa, the Intellectual Property Laws Amendment Act, in force in 2013, provided for the protection of traditional knowledge under the intellectual property laws, including under the design law. Article 53B of that Act provided for a disclosure requirement as a filing requirement, in order for a design to receive protection under the Act.

60. The Delegation of Nigeria, speaking on behalf the African Group, asked why the provision proposed by the African Group could not work in Article 3(1).

61. The Delegation of the European Union, on behalf of the European Union and its member states, requested the African Group to indicate the Article of the Swakopmund Protocol providing for the disclosure requirement, and to explain how that Article had been implemented in national laws.

62. The Delegation of Mozambique, indicating that the Swakopmund Protocol contained two relevant articles, namely Articles 10 and 19, pointed out that, as the Protocol had entered into force in May 2015, countries were still in the process of setting up the systems to bring it into practice in their countries. To the Delegation's knowledge, there were no practical examples of national implementation yet.

63. The Delegation of Hungary asked the Delegation of South Africa whether the disclosure requirement was considered as a filing date requirement under its law.

64. The Delegation of the United States of America recalled that the exercise was not to list each of the respective national practices in the DLT, but rather to find best common practices for the benefit of applicants and users. Treaties were structured with articles, which were the rigid portion of the Treaty, and regulations, which were more flexible. The Delegation further pointed out that, in looking at the Swakopmund Protocol, Article 19 only covered folklore and no reference was made to traditional knowledge or genetic resources. In addition, the Delegation did not see the tie between the definition of traditional knowledge and folklore in that Protocol and what was proposed in the DLT. The Delegation also considered that the proposed disclosure requirement was not limited to misappropriation or unlawful exploitation, but seemed to be a much broader requirement. Finally, Article 10 of the Swakopmund Protocol did not seem to contain a reference to patents or designs. In reply to the question raised by the Delegation of Nigeria as to why the proposal did not work in Article 3 of the DLT, the Delegation explained that Article 3 was meant to contain commonly agreed-upon elements of the application.

65. The Delegation of Mozambique indicated that the Swakopmund Protocol contained several provisions relating to TCE, TK and GR, setting out a variety of rights for the holders of the TCEs, TK and GR. The Delegation explained that there were some provisions with broad language, such as Section 10, which read as follows: "Any person using traditional knowledge beyond its traditional context shall acknowledge its holders, indicate its source and, where possible, its origin, and use such knowledge in a manner that respects the cultural values of its holders". The Contracting Member States could make this right meaningful through the requirement of disclosure of source and origin in the various types of intellectual property laws. Pointing out that this was a matter of national law and that the different ways in which countries would impose the disclosure requirement would vary from each country, the Delegation recalled that, since the Swakopmund Protocol had come into force in May 2015, it was very early to have more information on the implementation of this Protocol in national laws. The Delegation stated that, since some countries were implementing that Protocol, it seemed right to give them the policy space in Article 3 and allow them to continue requiring disclosure of origin.

66. The Delegation of Mexico requested clarification on the relationship between genetic resources and industrial designs.

67. The Delegation of Spain reiterated the question raised by the Delegation of Hungary as to whether the disclosure requirement was a criterion for obtaining a filing date.

68. The Delegation of Nigeria, speaking on behalf of the African Group, said that the most productive way to move forward on this matter could be to show examples on a screen of the relationship between industrial designs and TCE, TK and GR.

69. The Delegation of Mozambique, referring to the slides that were shown on the screen, said that, in some of the slides, the designs shown incorporated genetic resources, while on other slides, aboriginal paintings were reproduced on carpets. The Delegation added that, on the final slide, examples of registered designs from the OHIM's database were represented. Noting that those were just some examples of the way in which traditional knowledge, traditional cultural expressions and genetic resources could be protected, the Delegation pointed out that, should those designs be protected under design law, the protection would allow the exclusion of other products from the marketplace.

70. The Delegation of the United States of America, noting that no design application was shown in the slides, said that, if there were to be a submission to some office and that office were to make a determination, a reference to that application would seem to be a critical part to have any kind of standard or even do that analysis. The Delegation believed that the slides showed the commercial embodiments of design, but did not show any design application or registration, thus taking the discussion away from the DLT. Moreover, it was not clear how an

applicant would know when the disclosure requirement would be triggered. Referring to the image of a lizard shown in an example, the Delegation wondered whether the idea was that any lizard design would trigger the disclosure requirement. The Delegation concluded that a provision on a disclosure requirement raised many questions on its workability, framework and applicability.

71. The Delegation of Mozambique said that the disclosure requirement would work in the same way as under the copyright law in the United States of America, where copyright registration required disclosure of any prior work on which the new work was based. Referring to the question on the lizard design, the Delegation explained that, if the applicant had access to the aboriginal painting and based the carpet design on it, then he/she would need to disclose it. If the applicant did not have access to that and did not know any source of design other than his/her own brain, then he/she would not have to disclose it. The Delegation believed that it was a matter for national law to specify how to comply with that particular disclosure requirement. Looking at analogies with patent law, the Delegation said that the general rule was that, if a person did not know the source or origin, he/she did not have to disclose anything. The Delegation concluded that the idea was not to create an unnecessary burden, but to encourage people to comply with the disclosure of origin when they based their work on a pre-existing traditional work.

72. The Delegation of Spain, indicating that the question was how to deal with such applications, expressed the view that intellectual property offices did not have the necessary expertise and resources to do an in-depth analysis to detect TCEs or TK used in a design. The Delegation added that this was an issue of substance and not of formality.

73. The Delegation of Mozambique pointed out that there would not be a requirement for intellectual property offices to make an evaluation of whether or not a design was based on an earlier work. In many cases, the requirement was only to disclose the origin, so that the information was made available. The question might come up in later litigation or in matters regarding the validity or enforceability of the right. The Delegation stressed the fact that, while this was a question for national laws to decide, in principle there would be no additional burden on the office, as there would be no need for examiners to be qualified to analyze anything. However, the Delegation believed that the disclosure requirement could be an incentive to comply with laws protecting traditional knowledge, traditional cultural expressions and genetic resources.

74. The Delegation of Hungary, noting that the examples shown clarified the proposal, wondered whether the disclosure requirement was a substantive or a formal one. The Delegation indicated that, should the disclosure requirement be a filing date requirement, Article 3 could not accommodate it. In addition, the Delegation said that it did not see at which stage of the registration procedure the requirement would be checked, and whether it should be complied with before or after an office action, or whether it could be invoked as an invalidation ground. The Delegation further wondered whether the Contracting Parties to the ARIPO Swakopmund Protocol could give examples of how Sections 10 and 19 of that Protocol had been implemented.

75. The Delegation of the United States of America, referring to the previous intervention of the Delegation of Mozambique regarding the analogy with copyright, said that obligation to disclose information about prior works concerned derivative works. The right to create a derivative work was the right of the copyright owner. If one added something new to a design, that person would own the rights in the newly added part, but would not own the rights on the original part. The Delegation added that there was no tie between the obligation under copyright and the source of origin. The Delegation said that, in its view, what had been proposed by the African Group related to the examination procedure. The Delegation said that

it supported the idea that offices would determine the extent to which they would like to examine and look for novelty or non-original designs, based on publications, previous patents, or other articles.

76. The Delegation of South Africa clarified that South Africa was not a Contracting Party to the Swakopmund Protocol and that the disclosure requirement under its law was an application requirement.

77. The Delegation of Mozambique, in reply to the question by the Delegation of Hungary, said that the requirements provided by draft Article 3 related to the application and did not concern the filing date. Indicating that the Delegation was not able to speak on behalf of ARIPO in terms of how ARIPO was specifically implementing the Swakopmund Protocol, the Delegation referred to the experience of China, where the patent law required to disclose the origin, if known, or to declare that the origin was unknown. Examiners could require applicants to disclose the origin, if it appeared necessary. The Delegation believed that one way to comply with that requirement was to file the form of disclosure of origin, along with the application, or to submit it at a later stage. The Delegation further referred to the Swiss provision saying that its understanding of it was that the applicant had a period of some months after the application had been filed to comply with the disclosure of origin requirement. The Delegation concluded that the key issue was to allow countries to require that origin be disclosed, at whatever point in the application process they chose.

78. The Representative of HEP said that the images in the presentation witnessed the piracy of traditional knowledge of indigenous communities, that did not know how to protect themselves. Expressing the concern that indigenous people might not be able to put forward a claim, the Representative wondered how to deal with designs that had been acquired illicitly.

79. The Delegation of Greece, indicating that only elements of a general nature should be addressed in the Articles, reiterated the view that the disclosure requirement should be addressed in the Rules, which provided for a more flexible environment.

80. The Delegation of Nigeria, speaking on behalf of the African Group, expressed its readiness to work on a different language that would capture the principle and provide a level of comfort for other concerned delegations, but stated that it was committed to the principle.

81. The Chair proposed to continue the discussion in informal consultations.

82. The Chair resumed the work after the informal consultations. He reported that the question of technical assistance had not been discussed in detail in the informal meeting, as an agreement on the principle had been reached and the issue that remained at stake was whether the provisions on technical assistance would take form of an article or a resolution. Concerning the proposal by the African Group on Article 3, he reported that, further to the fruitful discussions which had taken place in the Plenary, the African Group had made a new proposal for Article 3(1)(a)(ix) during the informal meeting, which read as follows: “*[(ix) a disclosure of the origin or source of traditional cultural expressions, traditional knowledge or biological/genetic resources utilized or incorporated in the industrial design;]*”. The Chair also announced that he had put forward another proposal, as an alternative, of a new Article 1 bis, entitled “General Principles”, based on similar provisions of the PLT and the Marrakesh Treaty, which read as follows: “(1) *[No Regulation of Substantive Industrial Design Law] Nothing in this Treaty or the Regulations is intended to be construed as prescribing anything that would limit the freedom of a Contracting Party to prescribe such requirements of the applicable substantive law relating to industrial designs as it desires. (2)[Relation to Other Treaties] Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties.]”.*

83. In reply to a question by the Delegation of Japan on whether the issue of technical assistance could be brought again to the discussion since it had a comment on the wording of paragraph (3)(b) of the provision, the Chair noted that, at that stage, the discussion concentrated on the areas where agreement was still needed, and recalled that an agreement on the principle of technical assistance had been reached.

84. The Delegation of Canada, indicating that it could not express its position with regard to the new proposals, since it had not had time to study them and consult with the capital, asked whether the proposal by the Chair was intended to replace the text proposed with respect to the mandatory disclosure.

85. The Chair replied that it was up to the SCT to discuss and to reach an agreement on those proposals. He explained that the proposal by the Chair had been driven from earlier discussions on substantive and formalities issues and on the fact that the draft DLT did not contain an equivalent provision to that of the PLT on safeguarding the freedom of the Contracting Parties with respect to applicable substantive requirements.

86. The Delegation of the European Union on behalf of the European Union and its member states said it could not pronounce itself on the proposals at that stage. The Delegation wondered whether the earlier African Group proposal had been withdrawn and replaced with the new African proposal, and whether this meant that the new African Group proposal and the proposal by the Chair would be integrated into the text.

87. The Chair confirmed that the earlier proposal by the African Group was replaced by a new proposal and would be incorporated into the text. With regard to his own proposal, the Chair said that the Committee had to decide whether the proposal should be incorporated into the text, whether it could replace other text, or whether it was useful at all. The Chair further proposed to hold informal consultations.

88. The Chair resumed the meeting and informed the Committee that it had been decided in the informal consultations that Article 1 *bis*, within brackets, would be inserted into the draft text, accompanied by a footnote stating that it was the Chair's proposal. The new proposal from the African Group on Article 3(1)(a)(ix) would replace the former proposal from the African Group. On technical assistance, the views regarding the form of the provision remained different.

89. The Delegation of China, recalling the mandate of the WIPO General Assembly to finalize the draft of the DLT at the thirty-fourth and thirty-fifth sessions of the SCT, pointed out that document SCT/33/2 mentioned that some Member States had expressed reservations on five articles. However, draft Article 29, *Reservations*, contained no text. The Delegation wondered whether the content of that provision would be discussed by the SCT at its next session.

90. The Secretariat said that a distinction should be made between an article on reservations of a treaty and a position expressed by a Delegation in the course of the work of the SCT at a technical level. The mention that certain delegations had reserved their position on the working text had been included in the document to faithfully report the progress of the work. Reservations in a treaty were decided by a diplomatic conference. From a negotiation point of view, the Article on Reservations was usually kept until the very last moment because it was the ultimate way out of a deadlock in a negotiation. Thus, from a drafting point of view, the approach was to leave that provision empty to signal to delegations that there was a possibility to raise reservations. The Secretariat suggested not to draft reservations at that stage, which was without prejudice to the positions of the Delegations that had reservations and that could voice them during the course of the diplomatic conference.



91. The Chair concluded that the new proposal by the African Group for Article 3(1)(a)(ix) and the Chair's proposal for a new Article 1 *bis* would be included between square brackets in a revised version of document SCT/33/2 for consideration of the thirty-fifth session of the SCT.

## **AGENDA ITEM 5: TRADEMARKS**

*Revised Draft Reference Document on the Protection of Country Names Against Registration and Use as Trademarks*

*Revised Proposal by the Delegation of Jamaica*

92. Discussions were based on documents and SCT/34/2 Prov.2 and SCT/32/2.

93. The Delegation of Jamaica expressed the view that the Revised Draft Reference Document on the Protection of Country Names Against Registration and Use as Trademarks (SCT/34/2 Prov.2) did not assist the SCT further nor provided any better information, clarity or perspective beyond what had already been presented in document SCT/24/6. The Delegation believed that a more simplified document, which could be in the form of a chart, a table or a document on areas of convergence showing the various approaches to country name protection, would be more useful to advance the discussions. Since 2009, Jamaica had worked constructively with all Members of the SCT to find a common approach to address the issue. The Delegation had provided a detailed analysis of the Study (document SCT/29/5) and, given the shortcomings highlighted by that Study, it had submitted further written proposals and tabled a Draft Joint Recommendation at the thirty-first session of the SCT. Subsequently, the Draft Joint Recommendation was revised to reflect the comments and feedback provided by SCT members (document SCT/32/2). The Delegation had also actively participated in the side event convened during the thirty-second session of the SCT, which highlighted the need for a greater international protection for country names than current trademark practice generally offered. During the thirty-third session of the Committee, the Delegation responded to questions and concerns that were raised by some Member States. The Delegation was convinced that the time was appropriate to begin the substantive discussion of the Revised Draft Joint Recommendation. The aim of the document was not to prescribe rules that intellectual property offices must follow, nor to create additional obligations, but to establish a coherent and consistent framework to guide intellectual property offices and other competent authorities in addressing trademarks, business identifiers and domain names containing country names. The Delegation expressed its gratitude to the Member States that supported those important discussions and also to those delegations that had raised concerns. The Delegation stood ready to work with all Member States to produce a Joint Recommendation of the Paris Union and the WIPO General Assembly that would enjoy the consensus of the entire membership, and looked forward to continued discussion and progress on the issue within the SCT.

94. The Delegation of Romania, speaking on behalf of the CEBS Group, welcomed the conclusion that was stated in document SCT/34/2 Prov.2, which highlighted that several opportunities existed before and after trademark registration for invoking the protection of country names. The Delegation supported the proposal contained in that document to address the protection of country names in trademark examination manuals, with a view to increasing awareness of the possibilities to refuse or invalidate the registration of trademarks consisting of or containing country names. The CEBS Group held the view that it would be extremely useful to ensure careful examination of the potential consequences of any increased protection for all stakeholders, and believed that with the results of such an examination, the Committee would be in a better position to decide whether the current mechanism for refusal or invalidation of trademarks containing country names needed to be complemented.

95. The Delegation of Japan said that country names constituted geographical terms that were generally not registrable as trademarks if they were descriptive or deceptive in relation to the designated goods or services. The Delegation believed that even where geographical terms were included in trademarks, such registrations should not be excessively restrictive, as long as the marks were distinctive and the use of geographical terms was not liable to mislead the public. However, considering that geographical terms including names of States were used to indicate the place of origin of the goods, the Delegation feared that smooth economic activities could be affected by excessive protection of country names. Accordingly, the Delegation believed that it was important to bear in mind that the means for protecting country names should be discussed carefully, taking into account the impact of such protection on economic activities.

96. The Delegation of the European Union, speaking on behalf of the European Union and its member states, held the view that the Revised Draft Reference Document on the Protection of Country Names Against Registration and Use as Trademarks contained information from different sources, thus giving a broad overview. The Delegation of the European Union, on behalf of the European Union and its member states, concurred with the conclusion contained in the document that there were several opportunities at various stages before and after the registration of a trademark, where the protection of country names might be invoked. The Delegation believed that it was necessary to look at the issue from all perspectives, not only from the point of view of States and consumers, but also of the current users of country names in trademarks, who might legitimately use country names which had become well known and recognized in the marketplace. By taking account of this fact, the Committee could prevent upsetting legitimately held business practices. The Delegation supported the proposal contained in paragraph 90 of document SCT/34/2 Prov.2, that protection of country names could be addressed in trademark examination manuals, in order to raise awareness of the already widely existing possibilities to refuse or invalidate the registration as trademarks of signs consisting of or containing a country name. More specifically, it would appear useful to emphasize that country names could also be, by way of example, a possible application of the existing general grounds for refusing signs that lacked any distinctiveness, were descriptive, contrary to public policy, or were misleading, deceptive or false. The Delegation of the European Union, on behalf of the European Union and its member states, looked forward to participating constructively in future discussions on the topic and was ready to engage on a revised draft reference document considering national practices as well as the proposal presented by the Delegation of Jamaica.

97. The Delegation of China considered that document SCT/34/2 Prov.2 had summarized several national laws on the protection of country names and analyzed different practices to achieve such protection. The document would enable the SCT to further deepen the discussion on this question. The Delegation thanked the Delegation of Jamaica for its proposal that was very helpful for the work of the Committee and expressed willingness to join in the in-depth discussions on this matter.

98. The Delegation of Switzerland reaffirmed its support for any work aimed at improving the protection of country names. A country name could be registered as an element of a mark, business identifier or domain name, or could simply be used in connection with products or services. In practice, country names appeared in these identifiers and for reason, it seemed that the trademark system did not respond to the need of protection for country names, or did so only partially. The proposal by the Delegation of Jamaica was a comprehensive and interdisciplinary approach, which seemed to be necessary to deal with the scale of the problem. Having read document SCT/34/2 Prov.2, the Delegation noted that many countries refused the registration of a mark containing a country name as a sole element. However, the matter was much more ambiguous as regarded the registration of a mark that contained the name of a country among several elements. Therefore, the Delegation considered that non-binding guidelines at the international level were necessary and their discussion could lead to additional

clarity and greater legal security in this area. The Delegation opined that the Committee should examine and discuss the various provisions of the Joint Recommendation and believed that in so doing, WIPO could make a major contribution to the development of the intellectual property system, for the benefit of users and consumers in this area.

99. The Delegation of Monaco expressed support for the proposal made by the Delegation of Jamaica, which seemed to be a good basis to achieve progress in this area. For more than 15 years, national authorities in Monaco had engaged in the world-wide protection of the names “Monaco” and “Monte Carlo”. However, they had noted that the protection granted to names of States was neither uniform nor exhaustive and required the mobilization of a number of human resources, led to great expense and did not guarantee the preservation of the image and reputation of a country, both from the point of view of local stakeholders and consumers. The Delegation hoped that the Committee could advance the work on this issue, in particular on the proposal presented by the Delegation of Jamaica.

100. The Delegation of Bahamas aligned itself with the statement made by the Delegation of Jamaica and supported the proposed Revised Draft Joint Recommendation Concerning Provisions on the Protection of Country Names. As a small island developing State from the GRULAC region and more intimately from the Caribbean Community, Bahamas understood why the protection of country names was needed as well as how the lack of such protection had impacted on its economy. National economies in that area were subject to exogenous shocks, especially with regard to the effects of climate change, which was witnessed by the severe weather conditions that the region experienced. A reading of the Jamaica proposal revealed that it was not calling for legally-binding rules but rather for the establishment of international standards, harmonizing the treatment of registrations, including country names, to help guide national intellectual property offices. The Delegation called on the membership of the Organization to support the proposal of the Delegation of Jamaica, to begin substantive discussions on the matter and to have a document showing areas of convergence in order to move the matter forward.

101. The Delegation of Spain supported the declaration made by the Delegation of the European Union regarding the revised proposal presented by the Delegation of Jamaica and considered that names of States were appropriately protected in the current European legislation and in national trademark laws. As the Delegation had previously expressed and consistent with what had been outlined by the Delegation of the European Union, a detailed study on the issue of names of States was needed, but that study should gather all the perspectives and points of view, not only the point of view of the States and consumers, but also the point of view of current users of country names in trademarks, in order to avoid upsetting legitimately held business practices. The Delegation considered it highly useful to work and look deeply into this issue and thanked the Delegation of Jamaica for its efforts to draft the successive proposals, taking into account the opinion of all interested delegations and international organizations.

102. The Delegation of Hungary noted that having studied with great interest the Revised Draft Reference Document, it came to the conclusion that especially in the area of misleading or deceptive marks, the practice of intellectual property offices and authorities was quite divergent. The Delegation saw merit in moving forward to examine and underline the reasons for these divergent practices, with a view to having a more in-depth discussion about the application of those grounds for refusal and invalidation of trademarks.

103. The Delegation of Trinidad and Tobago said that developing nations were becoming increasingly aware that not only brands faced dilution, but also the reputation of the country names appended to them. Hence, trademark examination procedures needed to be more sensitive of that reality and in that context, the Delegation supported the proposal made by the Delegation of Jamaica.

104. The Delegation of France endorsed the intervention made by the Delegation of the European Union. The Delegation fully understood that the issue of the protection of names of States was an important topic that should be dealt with in the Committee and supported the continuation of work on this topic. The Delegation noted that paragraph 90 of the Revised Draft Reference Document had outlined the way forward and it would be useful to explore it. Any document that would allow the Committee to move ahead on this question and to gain additional knowledge of different office practices in the handling of names of States would provide a better understanding of the concerns that Member States had about this issue.

105. The Delegation of Georgia shared the position of the CEBS Group, to which it was a member, and declared that the possible impact of the instrument contained in the proposal by the Delegation of Jamaica should be studied thoroughly.

106. The Delegation of Ghana said that it would welcome further discussions on country names, which served as important identifiers in nation branding strategies.

107. The Representative of JPAA indicated that although document SCT/34/2 Prov.2 showed that rules and practices concerning the protection of country names varied among different Member States, country names were sufficiently protected under the legislation of many countries. The Representative expressed concern that the adoption of new internationally-harmonized guidelines for country names might interfere with the economic activity of registered owners of trademarks containing country names, who legitimately owned rights on those marks and hoped that the opinion of the users would be taken into account in the SCT discussions.

108. The Representative of HEP attached particular importance to signs that could be considered as trademarks, especially at the regional level. The Representative noted that it was not always easy to understand the difference between a trademark and a geographical indication in the proposal presented by the Delegation of Jamaica. The objective of HEP was to better understand the issue in order to explain it to other groups that were not present in the session.

109. The Delegation of Jamaica referred to the recurrent concerns that had been raised by Delegations, in particular that trademark examination manuals could be a useful means of protecting country names, as proposed in paragraph 90 of the Revised Reference Document. The Delegation highlighted that, while the use of trademark manuals should be supported, it was still necessary to reach some international consensus on these issues. Thereafter, States could revise their trademark examination manuals rather than leaving the issue exclusively to national jurisdiction. With regard to the second concern relating to the impact that the proposed protection would have on legitimate users of country names, the Delegation considered that although a balance was necessary and an assessment would be useful, it was not sure how readily that could be done, and how reliable that information would be. It was important to acknowledge the fact that States and in particular small-island developing States and States with nation branding strategies were legitimate users of their own country names. Therefore, the Delegation was of the view that the balance sought should also secure the rights of those States and the protection that they deserved.

110. The Chair noted that the Committee had agreed to the content of document SCT/34/2 Prov.2. However, Members were divided in two groups: the first group considered that the document was self-sufficient and useful for trademark examiners and a second group which had expressed the wish to go further and, in particular, to prepare a Joint Recommendation. In one suggestion, it was requested that the Secretariat prepare for discussion during the next session, a brief document based on the reference document, which could list the areas of convergence and also divergent practices. Document SCT/34/2 Prov.2 could be adopted as a reference document to be used by national offices.

111. The Delegation of Switzerland supported the proposal of the Chair and considered it a good approach to move ahead. The Delegation proposed that the convergence document should be based on the proposal put forward by the Delegation of Jamaica, which was more specific and limited than the general document prepared by the Secretariat.

112. The Delegation of Monaco endorsed the proposal of the Chair as well as the suggestion made by the Delegation of Switzerland and asked whether the new document could be drafted in accordance with the suggestion made by the Delegation of Jamaica to present the information on a table, or if the document would take another form.

113. The Delegation of Canada expressed the view that the SCT had undertaken sufficient work on the protection of country names.

114. The Delegation of the European Union, speaking on behalf of the European Union and its member states, believed that if the SCT were to continue work on this subject, the focus should be on identifying national practices.

115. The Delegation of the United States of America supported the comments made by the Delegation of the European Union to the effect that the information document should constitute the basis for preparing further work on areas of convergence. The Delegation said that it would need additional time to consider the proposal presented by the Delegation of Jamaica. The proposal did not, in the opinion of the Delegation, seem useful in terms of looking at national practices and it did not seem, for example, that the practice of the United States of America was included in that document.

116. The Delegation of Japan supported the statements made by the delegations of the European Union and the United States of America, and called for the preparation of a further study in order to understand national practices and consider the adequate balance between the protection of country names and trademarks.

117. The Delegation of Norway agreed with the statement made by the Delegation of Canada that the SCT had done sufficient work on country names and was of the opinion that the Revised Draft Reference Document was a natural conclusion of that work. Should the Committee continue to work on this issue, the Delegation supported the suggestion made by the Delegation of the European Union to base any further work on the Draft Reference Document and not on the proposal made by the Delegation of Jamaica.

118. The Delegation of Jamaica felt that a document on areas of convergence could lead to a more focused discussion on this agenda item. Taking as an example the areas of convergence on trademark opposition procedures, the Delegation considered that such a helpful approach could also be used in relation to country names. The Delegation considered areas of convergence to be a useful tool that could facilitate additional discussions and help achieving consensus on the proposed Draft Joint Recommendation. While the Delegation agreed that the revised reference document to be prepared by the Secretariat could also include a chart or a table to show both areas of convergence and divergence, the approach might be similar to that used in previous documents, provided that those areas were clearly shown. In addition, the Delegation believed that it could be useful to point to the existing national practices based on the current Reference Document, but to also show where the Draft Joint Recommendation could address the areas of divergence.

119. The Delegation of Spain supported the declaration made by the Delegation of the European Union concerning the identification of different national practices. The Delegation also considered that the Revised Document prepared by the Secretariat was sufficiently explicit.

120. The Delegation of the Russian Federation agreed with the conclusions included in document SCT/34/2 Prov.2. However, in view of the concerns expressed by several delegations, it was prepared to continue the work on country names, in particular in the direction contained in the proposal by the Chair.

121. The SCT adopted the Revised Reference Document on the Protection of Country Names Against Registration and Use as Trademarks (document SCT/34/2 Prov.2) as a reference document.

122. The Chair requested the Secretariat to prepare a new document, based on document SCT/34/2 for discussion at its thirty-fifth session under this agenda item, identifying different practices and approaches, and existing areas of convergence in regard of the protection of country names.

#### *Update on Trademark-Related Aspects of the Domain Name System*

123. Discussion was based on document SCT/34/3.

124. The Delegation of Hungary thanked the Secretariat for the update contained in the document. Given the increasing number of new gTLDs and the likelihood of future trademark-related debates, the Delegation highlighted the importance of proper institutional and procedural frameworks for trademark and other rights holders, particularly the rules and procedures for dispute resolution and requested the Secretariat to keep Member States updated. The Delegation also requested further explanation from the Secretariat about uncertainties in the effectiveness of the Post Delegation Dispute Resolution Procedure (PDDRP) and the relationship between the Uniform Rapid Suspension System (URS) and the Uniform Domain Name Dispute Resolution Policy (UDRP).

125. The Delegation of Japan referred to the large number of new gTLDs to be introduced and said that the legitimate interests of trademark right holders should not be unreasonably prejudiced and trademark right holders should not be unduly burdened when implementing the rights protection mechanisms of ICANN.

126. The Delegation of Switzerland thanked the Secretariat for the update and joined the Delegation of Hungary's request for further clarification about the PDDRP.

127. The Secretariat explained that the PDDRP is a dispute resolution mechanism that the WIPO Arbitration and Mediation Center (WIPO Center) proposed to ICANN to address systemic cybersquatting at the second level in gTLDs where registry operators would themselves be complicit. While a number of changes were made through ICANN's policy development processes, this post delegation mechanism is currently available for trademark owners to use in the context of ICANN's new gTLD program. The Secretariat noted that no PDDRP case has been filed to date and indicated that it will continue to monitor it from a dispute resolution provider perspective. Regarding the relationship between the URS and the UDRP, the Secretariat indicated this was an area which the WIPO Center raised during the ICANN's new gTLD program policy development process and that there is currently limited URS case experience to judge its effectiveness. The Secretariat further explained that a policy review process is underway at ICANN to review the URS and potentially also the UDRP, which the WIPO Center will closely monitor with a view to providing its expertise where appropriate.

128. The Representative of ICANN indicated that as the Secretariat mentioned, the gTLD process at ICANN continues with the introduction of new gTLDs. In addition, the Representative explained that a review process has been initiated to look at the rights protection issues, the wider economic political aspects, and consumer rights processes in

relation to the new gTLDs that have been introduced. The Representative expressed that ICANN has made it clear that there will be a second round of applications for new gTLDs in due course, which could start in two to three years depending on the various review mechanisms that are taking place. The Representative explained that these review mechanisms will be looking at the economics of the new gTLDs, the consequences of introducing them in terms of consumer protection and privacy, and other aspects such as competition, noting that governments and IGOs will have the possibility to provide input in such processes through their representation in ICANN's Governmental Advisory Committee.

129. The chair stated that the SCT had considered document SCT/34/3 and that the Secretariat was requested to keep Member States informed of future developments in the DNS.

## **AGENDA ITEM 6: GEOGRAPHICAL INDICATIONS**

130. Discussions were based on documents SCT/30/7, SCT/31/7, SCT/31/8 Rev.4, SCT/34/4 and SCT/34/5.

131. The Delegation of the United States of America indicated its intention was to address its proposals contained in documents SCT/30/7, SCT/31/7 and SCT/34/5 at once as they were expressing the same concept. Recalling that it had proposed several times to the SCT to discuss national approaches to geographical indication systems, the Delegation reiterated its proposal with the intent of fulfilling the mandate of the WIPO General Assembly. Indicating that the historical documents listed in document SCT/34/5 were put forward to highlight the rich history of the discussion in the SCT on geographical source identifiers, the Delegation stated that they also underlined how the SCT conversation had stopped to respond and react to other geographical indication debates happening in other fora. The Delegation proposed to end the hiatus of the last ten years on geographical indication discussions at the SCT, which was mainly due to WTO negotiations. In its view, work on geographical indications should now be resumed. Referring to its proposals contained in documents SCT/30/7 and SCT/31/7, the Delegation asked for a work program to explore and share information on national systems for the protection of geographical indications as it sought information on how national systems that had developed over the last ten years handled particular issues related to geographical indication examination and protection and why they had chosen particular solutions. Highlighting that many of the historical papers identified issues considered to be the most important or difficult at that time, the Delegation considered that it could be useful to discuss many of these issues as geographical indication registration systems had matured and national offices had more experiences to share. Noting that the historical papers identified very broadly how international treaties addressed issues or broad general trends of systems around the world and observing that it could not find much information about specific national systems, the Delegation considered that this stood in contrast to the Reference Document that the SCT was discussing on country names, where countries had shared specific experiences. Recognizing that each system was designed to advance different policy interests, the Delegation considered important to discuss not just what mechanisms of protection were in place at the national level but also why they were designed that way. As it sought a constructive dialogue, not country monologues, the Delegation welcomed ideas on how to achieve that dialogue. Considering that asking the Secretariat to draft a questionnaire or a study or conduct a survey could not be sufficient, the Delegation wondered whether topics for discussion could be proposed by Delegations, by submitting questions to be answered by other SCT members. With this respect, the historical papers could give ideas for possible topics. Although it was aware of the fact that it had proposed a heavy reading listing for the present meeting, the Delegation hoped that these documents could succeed in refreshing the collective memory on the broad array of issues that would benefit from the renewed focus of SCT members, considering the changes in the intellectual property landscape in the last decade.

132. The Delegation of Hungary, wondering whether the proposals on the table should be discussed at once or separately, expressed its preference for discussing in a separate manner the basic proposal of the Delegation of the United States of America and the joint proposal contained in document SCT/31/8 on the issue of geographical indications in the DNS, taking into account their different natures and contents. The Delegation added that it reserved its right to comment on the proposal put forward by the Delegation of the United States of America once the way to proceed agreed.

133. The Delegation of India, speaking in its national capacity, expressed its support for the proposal made by the Delegation of the United States of America to develop a survey on the existing national geographical indications regime to enhance the understanding of the commonalities and differences in approaches to geographical indication protection adopted by various Member States.

134. The Delegation of Chile, underlining that it attached great importance to the discussions regarding geographical indications as important tools for economic development, commended the Delegation of the United States of America for the document SCT/34/5, which gave a complete historical outline of documents that had been drawn up until now on this topic. In its view, this enabled SCT members to come up with two elements. Firstly, the Delegation stressed that debates on this issue were not foreign to this Committee and that these documents illustrated that the discussions had not been peaceful. Secondly, since many years had gone by since the last debate in this forum, the Delegation was of the view that the progress and decisions as regards public policies in the Member States deserved today a broad discussion, as mandated by the General Assembly. Observing an international legislative horizon in which many visions and systems were coexisting, the Delegation stated that this included a great range of *sui generis* protection within the framework of the TRIPS Agreement and the bilateral and regional agreements in the past couple of years. Recalling that the mandate of the General Assembly should guide the discussion on this agenda item, the Delegation considered important to establish a deadline to submit questions about topics of interest to be commented on by Member States. The Delegation of Chile concluded by stating that this could be a good form, able to provide a conceptual framework to explore the different protection systems covering all the aspects at national and regional level.

135. The Delegation of Canada, thanking the Delegation of the United States of America for its proposals, believed that there would be value added in studying aspects of geographical indication protection since national systems of protection differed. As, during the years where the SCT had looked at geographical indications, numerous bilateral and multilateral treaties had been signed, the Delegation was of the view that it could be time to conduct an update. Considering that the question of the genericness test had not been fully scoped out, the Delegation expressed its interests in a study on that issue. The Delegation said that the proposals of the Delegation of the United States of America had merit in lightening the fast developing discussions on geographical indications at multilateral and bilateral regional levels and the need to better understanding the emerging global implications on this issue. Therefore, the Delegation of Canada supported further study and analysis by the SCT, as suggested in the proposals of the Delegation of the United States of America. Referring to the proposal contained in document SCT/31/8 Rev.4, the Delegation indicated that it understood the wish of some Member States to discuss the protection of geographical indications in the domain name space. The Delegation recalled that the SCT had considered this issue in 2002 for the two WIPO recommendations on domain names. However, as these discussions had taken place twelve years ago, the Delegation of Canada said that it was not opposed to further study on this topic.

136. The Delegation of Japan expressed its support for a study to be undertaken by the Secretariat in order to examine various national legal approaches to specific geographical indication topics as, on the one hand, the WIPO General Assembly had directed the SCT to



examine the different systems for protection of geographical indications and, on the other hand, the SCT was the most appropriate forum in WIPO to discuss for the geographical indication issue. Considering that such study would help to deepen the understanding of various geographical indication issues, the Delegation of Japan lent its support to the proposal of the Delegation of the United States of America.

137. The Delegation of the Republic of Korea believed that there was an added value in studying various approaches for the protection of geographical indications, considering that such systems differed from country to country. Throughout the last decade, these differences had become more and more pronounced as the result of various bilateral and multilateral agreements that had been signed and legislations that had been changed. The Delegation was of the view that the Republic of Korea served as an appropriate case study on why additional research into national geographical indication systems was needed. The Republic of Korea operated a geographical indication filing system that functioned in a capacity similar to its system for protecting collective and certification marks under the Trademark Act. In accordance with the TRIPS Agreement, the Republic of Korea also protected geographical indications of WTO Members relating to wines, spirits and other items listed in the FTA agreement. The Delegation announced that it would be pleased to share with WIPO Member States its experiences with implementing various geographical indication protection systems. Furthermore, the Delegation stressed that the SCT was the most suitable forum for discussing geographical indication filing systems since it was the WIPO Committee, dealing with geographical indications, which could be equally attended by all WIPO Member States.

138. The Delegation of Uruguay said that it attached great importance to the discussion on geographical indications in this Committee. As previously underlined by other Delegations, the Delegation of Uruguay considered that the SCT was the appropriate forum to discuss this issue. As ten years had gone by since the last time that the SCT had discussed geographical indications, the Delegation welcomed and supported the proposal of the Delegation of the United States of America. The Delegation considered that a joint work between the Secretariat and the Member States could lead to a questionnaire useful to further clarify this issue.

139. The Delegation of France considered important to be precise about what SCT members wished to do in this possible study, which could be undertaken to respond to the request from the General Assembly. Recalling that the decision of the General Assembly had directed the SCT to examine the different systems for protection of geographical indications, the Delegation underlined that it was important to specify that the mandate of the General Assembly did not bear on international treaties but dealt with the review of national systems of protection of geographical indications. Noting that many delegations wished to introduce, in the scope of the study, the issue of international treaties, the Delegation stressed that this was not the mission entrusted by the General Assembly. Referring to its proposal, the Delegation of France highlighted that it aimed at specifying that the study would bear on the protection of geographical indications in national systems. As it also had queries about the functioning of certain national systems, the Delegation sought a study on the procedures and limits of the protection of the geographical indications through collective and certification marks, as well a complimentary study on marks using geographical names. Having a special interest in the protection of geographical indications on the Internet, on which the legislation was still lagging behind, and referring to the proposal contained in document SCT/31/8 Rev.4, which indicated the different tracks of study on the protection of geographical indications in domain names, the Delegation of France considered that means of improving protection in this field had to be found.

140. The Delegation of Monaco, coming back to the procedural issue raised by the Delegation of Hungary, wondered whether the SCT had to look at the proposals separately or together and expressed its favour for a separate handling.

141. The Delegation of Romania, on behalf of the CEBS Group, indicated that the CEBS Group appreciated and supported the joint proposal on protection of geographical indications in the DNS. The proposal of a study on the opportunity to extend the scope of WIPO Uniform Domain Name Dispute Resolution Policy to country names and geographical indications 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. The Delegation concluded by underlining the need to ensure that holders of geographical indications be adequately protected against infringing domain names.

142. The Delegation of the European Union, speaking on behalf of the European Union and its member states, welcomed the decision by the General Assembly to direct the SCT to examine the different systems for protection of geographical indications within its current mandate and covering all aspects. The Delegation announced that it looked forward to the discussions on how to take the work on geographical indications forward. Noting that the work should be within the current mandate of the SCT, the Delegation stated that SCT had no legal mandate to touch upon, review or interpret the Lisbon Agreement or the Geneva Act of the Lisbon Agreement. As a consequence, the examination of the different systems for protection of geographical indications within the current mandate and covering all aspects could not be based upon the proposals contained in documents SCT/30/7 and SCT/31/7 as they related to the Lisbon Agreement and the Geneva Act of the Lisbon Agreement. Considering that the SCT did not have a mandate to review or revise these agreements, the Delegation said that the same applied to many of the proposed documents listed in the proposal by the Delegation of the United States of America contained in document SCT/34/5 since many of these documents concerned the Lisbon Agreement and were therefore outside the scope of the mandate of the SCT. The Delegation indicated that a study on geographical indications and the DNS or geographical indications and the Internet, as proposed in documents SCT/31/8 Rev.4 and SCT/34/6, would be a way forward. Geographical indications and domain names was a very important and actual topic which could benefit Member States and users. Noting that this proposal had already gained support from a number of other Delegations, the Delegation believed that it should serve as the basis for the SCT future work. The Delegation indicated its specific interest in the proposal to conduct a study which should investigate whether the need of users for the protection of geographical indications in the DNS had changed, whether the measures available today for holders of geographical indications against infringing domain names were effective enough and how the existing legal and procedural framework could be improved. Expressing its support for the proposal by the Delegation of France to conduct a study on geographical indications in national systems, the Delegation said that it could include a study on the terms and limitations for the protection of geographical indications through collective and certification marks, as well as a study on legislation and case law relating to marks using geographical names. The Delegation believed that a study in the area of geographical indications based on the proposal of the Delegation of the United States of America would add little as, in essence, it would only reiterate the obvious fact that some countries protected geographical indications through the trademark system and others, including the European Union, through a *sui generis* system.

143. The Delegation of Israel said that it supported further study and analysis regarding geographical indications, as suggested by the Delegation of the United States of America.

144. The Delegation of Poland, lending its full support to the proposal contained in document SCT/31/8 Rev.4 regarding the protection of geographical indications in the DNS, expressed its wish to co-sponsor it. Moreover, the Delegation, expressing its support for the proposal by the Delegation of France, said that it aligned itself with the statement of the CEBS Group and the Delegation of the European Union on behalf of the European Union and its member states. In the viewpoint of the Delegation, a study on the protection of geographical indications against infringing domain names could benefit many countries and their users. In view of the increased popularity of the Internet, the growing number of domain names, the great

amount of promotion of enterprises and the specific interest of local producers that wanted to promote their original products, geographical indications protection on the Internet was highly required. The Delegation indicated that, in Poland, geographical indications were becoming more attractive for entrepreneurs, as reflected in the growing number of registered agricultural geographical indications. Due to the significance of geographical indications for spirit drinks in the Polish market, its import and export for the Polish economy, the Delegation considered that such a study would have a significant value. The Delegation concluded by stating that it seemed essential to further analyze the subject of geographical indication protection in the DNS.

145. The Delegation of Argentina, taking into account the decision of the General Assembly regarding geographical indications, supported the proposal put forward by the Delegation of United States of America to carry out studies on national systems for the protection of geographical indications. The Delegation considered that document SCT/34/5 submitted by the Delegation of the United States of America identified a set of documents which could be useful for the discussions on geographical indications in the SCT.

146. The Delegation of Australia expressed its support for the proposal of the Delegation of the United States of America for a discussion on specific issues of policy interest to SCT members on the different national systems for the protection of geographical indications. Recalling that national and international circumstances had changed since the SCT had last discussed geographical indications in depth, the Delegation was of the view that some WIPO Members could now be better placed to discuss their policy settings. For some members, their approach to geographical indication protection could have changed. Numerous trade agreements having been concluded and, in some cases, implemented and this could result in an update or a different treatment of geographical indications. Finally, the Delegation stated that it was open to the idea of inviting Member States to identify specific issues, including issues related to certification and collective marks and *sui generis* geographical indication protection systems.

147. The Delegation of the Russian Federation, recalling that it had previously expressed its interest in geographical indications on a number of occasions, indicated that the Russian Federation was currently looking at the need for reforming its national legislation and creating an effective system to protect geographical indications. Therefore, the Delegation was interested in the Committee looking into the various different national systems for protecting geographical indications. The Delegation proposed to take up the previous work of the SCT on geographical indication protection and to add the current investigation into the various national legislations.

148. The Delegation of Switzerland, referring to the procedural question raised by the Delegation of Hungary and other Delegations, was of the view that the two issues needed to be dealt with separately. On the one hand, concerning the mandate conferred by the General Assembly to the SCT, the Delegation noted some unity of perspective among the three successive proposals from the Delegation of the United States of America and the proposal of the Delegation of France. On the other hand, concerning the protection of geographical indications and country names, which was a broader and specific issue within the DNS, the Delegation believed that it required to be dealt with separately. The Delegation noted that the subject of geographical indications, which was included within the scope of the Standing Committee, was taking a broader effect due to various concrete proposals and to a reminder of previous work within WIPO since 1970. The Delegation said to be pleased to be able to deal again with specific, current and material issues, in a constructive spirit aimed towards pragmatic solutions, which would enable the beneficiaries of the concerned intellectual property rights to have greater legal security. The Delegation stressed that the revision process of the Lisbon Agreement, which had taken place in the specific framework appropriate for the revision of a pre-existing international agreement and with the active participation of a great number of WIPO Members, had led to the adoption of the Geneva Act. Considering that the SCT had not been

the right place to have parallel discussions on the revision of the Lisbon Agreement, the Delegation also believed that the SCT was not the right place for re-opening the discussions of the Diplomatic Conference held in May 2015. Reminding that those discussions had been very open, very intensive and often passionate, the Delegation was of the view that tensions of the negotiation had to be left behind and that the result of the revision of the Lisbon Agreement should be considered for what it was. It was an act which would only commit those countries which would decide to ratify the Geneva Act. The Delegation considered that only the implementation of the Geneva Act would enable to discover possible unresolved problems for countries participating in the system and to measure the scope of flexibility introduced into the Geneva Act so that the latter be compatible with the broadest possible number of systems and legal situations and, therefore, encouraged a greater number of countries to be involved. The Delegation declared that it took very seriously and recognized the legitimacy of the concerns of each country wishing to have protection for their geographical indications, irrespective of their national legal systems. In conformity with the international agreements, the Delegation also considered that geographical indications were a specific category of intellectual property law which could not necessarily be entirely covered under other systems. This meant that, whatever the legal system chosen at the national level, provisions specific to geographical indications were vital, at the national and international levels, to adequately deal with the peculiarities linked to the concept of geographical indications. While taking into consideration the fact that some countries did not seem to share its view, the Delegation announced its openness to further discuss this aspect. In this perspective, the Delegation believed that the discussion should be re-focused on the national level and, on the one hand, on how the country of origin protected its own geographical indications and, on the other hand, on how the country protected foreign geographical indications. As indicated at the last session of this Committee, the Delegation did not think that a general study on the various different national systems could bring in new elements to the discussion able to foster tangible results. Underlining that the mandate from the General Assembly did not mention such a study, the Delegation believed that Members needed to agree on the substance to be dealt with and on the respective roles of the Secretariat and the SCT Member to carry out this work program. Moreover, in the opinion of the Delegation, documents SCT/30/7 and SCT/31/7 were no longer a basis for discussion as they largely referred to the revision process of the Lisbon Agreement which had ended last May. As regards geographical indications, the Delegation considered that the current situation in this Committee was a bit confused. There were two previous proposals from the Delegation of the United States of America which were partly obsolete and would need to be revised. There was the joint proposal from the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Portugal, Republic of Moldova, Spain and Switzerland on a specific, current and urgent subject, which was not currently dealt with. Finally, there was the last proposal submitted by the Delegation of the United States of America accompanied by a serie of older documents reflecting various different contexts of discussions on geographical indications. For the Delegation, a summary of the proposals would be preferable to the juxtaposition of antagonistic proposals. The Delegation believed that the future work should be guided by specific questions towards a search for similarities and compatibilities, regardless of the various different systems used by different countries. As it was about identifying possible solutions to effective, concrete and limited problems, the Delegation welcomed with great interest, and was favorable to, the proposal made by the Delegation of the United States of America, according to which SCT members could raise questions regarding national systems for the protection of geographical indications within a certain time period. The Secretariat would then compile the questions received so as to enable the Committee to work, at its next session, on a summary of these questions. This summary could serve as a basis for a work program, the modalities of which would be decided upon once the substantive base known. Referring to the issue of geographical indications and country names within the DNS, the Delegation of Switzerland recalled that it had proposed, with other countries, to launch substantive discussions on this issue, which was currently developing very rapidly and broadly. For this reason, it needed to be dealt with without delay. The Delegation was of the view that this subject was of interest to all WIPO members, irrespective of the instruments through which they protected geographical

indications and whatever their own perception of the stake involved in the use of country names. The Delegation of Switzerland concluded by inviting SCT members, which were opposed to works on this subject, to state the possible grounds for which the study proposed in document SCT/31/8 Rev.4 would be useless or inappropriate.

149. The Delegation of Portugal, sharing the views expressed by other Delegations, underlined that the mission assigned to the SCT by the General Assembly should be carried out within the current mandate of this Committee. The Delegation believed that there were some particular aspects to be addressed by this Committee in the future, such as the protection of geographical indications in the DNS. The Delegation also welcomed with great interest the proposal contained in document SCT/34/6 submitted by the Delegation of France.

150. The Delegation of Iran (Islamic Republic of) lent its support to the statement made by the Delegation of Switzerland and, in particular, to its address to avoid opening again unfruitful discussions in this Committee on the Diplomatic Conference for the Geneva Act of the Lisbon Agreement. Considering that the mandate of the General Assembly should not be interpreted beyond the mandate of the SCT, the Delegation said that the study proposed by the Delegation of the United States of America should be conducted within the SCT mandate. The Delegation believed that this Committee had no mandate to interpret or touch upon the Lisbon Agreement or the Geneva Act of the Lisbon Agreement. The Delegation said that it also shared the concern raised by the Delegations of Hungary and Monaco about the way to proceed. Finally, the Delegation expressed its support for the proposal made by the Delegation of France to carry out a study on national laws and national systems for geographical indication protection.

151. The Delegation of Georgia supported the joint proposal presented by the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Portugal, Republic of Moldova, Spain and Switzerland on the protection of geographical indications in the DNS as well as the proposal submitted by the Delegation of France.

152. The Delegation of Italy, lending its support for the proposal made by the Delegation of France, stated that it agreed to undertake specific studies on collective and certification marks and, particularly, a study on the protection of geographical indications on the Internet.

153. The Delegation of the Republic of Moldova supported the proposal to continue the study on geographical indications and country names on the Internet domain names.

154. The Delegation of Chile, endorsing the statements made by the Delegations of Australia and Switzerland, believed that the proposed form would be appropriate to implement the mandate of the Committee and deal with this discussion among Member States. With regard to the proposal contained in document SCT/31/8 Rev.4, the Delegation indicated that it shared its basic background. Referring to the debate on top level domain names, the Delegation was of the view that this should take into account other distinctive signs such as country names and geographical names. While it valued any initiative enabling members to discuss this topic, including a study, the Delegation said to be also open to other possibilities such as a report from the Secretariat on this issue or a more flexible modality for discussion among Member States. The Delegation considered that, only after having discussed the current situation and explored possible conclusions, the need to modify, broaden or make suggestions for resolving these disputes could be evaluated. The Delegation considered difficult to have discussions on this issue and on this document at this stage.

155. The Delegation of Spain supported the proposal made by the Delegation of France on the study of protection of the geographical indications on the Internet.

156. The Delegation of Turkey believed that, in line with the mandate given by the General Assembly, it would be useful to examine different systems for protection of geographical indications, covering different aspects, especially by way of carrying out a study on this topic. The Delegation stated that it also saw merit on elaborating upon the protection and use of geographical indications in the DNS. Finally, the Delegation supported the views proposing that the two issues be dealt with separately.

157. The Chair noted that all points in this item will remain on the Agenda, to be addressed at the next session of the SCT.

#### **AGENDA ITEM 7: ADOPTION OF THE SUMMARY BY THE CHAIR**

158. The SCT approved the Summary by the Chair as presented in document SCT/34/7.

#### **AGENDA ITEM 8: CLOSING OF THE SESSION**

##### Closing Remarks

159. The Delegation of Romania congratulated the Chair on its determination, patience and assiduous efforts to advance the SCT agenda on all three topics - industrial designs, trademarks and geographical indications - and extended its thanks to the Secretariat both for the documents and constant support provided throughout the session. With regard to the DLT, the Delegation believed that the dynamic of the discussions had been positive as the proponents of the disclosure requirement had provided more clarifications on the intent of their submission and further explanations had been offered by those sharing concerns with respect to the validity of the proposal. While being thankful to the African Group for simplifying its proposal, the Delegation reported that it was not yet in a position to express satisfaction with this move as the new text failed to address its concerns. In its view, the current draft treaty and draft regulations did provide for the required policy space. Although this was its preferred option, the Delegation of Romania would, in a constructive spirit, consider the proposal by the Chair based on previous treaties. The Delegation said that it was confident that language would never be a barrier for finding common ground if the political will was there. The Delegation of Romania concluded by announcing that it looked forward to the next SCT session and hoped that progress would be made also on the other topics to the benefit of all Member States.

160. The Delegation of Greece, speaking on behalf of Group B, expressed its gratitude to the Chair for its commitment and dedication to the work of the Committee. The Delegation said that Group B was looking forward to continue the discussions on the DLT with the ultimate goal that the text would be finalized and that an agreement would be reached on the convening of the diplomatic conference at the end of the first half of 2017.

161. The Delegation of the European Union, speaking on behalf of the European Union and its member states, wished to thank the Chair for taking the discussions forward with its habitual verve and determination and the Secretariat for its valuable assistance. The Delegation had noted the interesting and useful discussions on the DLT, geographical indications and trademarks during this session of the SCT. Regarding the DLT, although the SCT went forward to the next session with a new draft, the Delegation stated that it regretted that the Committee had not been able to complete the discussions on the need and relevance of a disclosure requirement and the form that technical assistance should take. The Delegation of the European Union, on behalf of the European Union and its member states, hoped that stakeholders would be able to resolve these outstanding differences in bilateral contacts over the next few months, with a view to finalizing agreement at thirty-fifth session of the SCT. Regarding geographical indications, the Delegation reported that it had noted the different

proposals on the table, some complimentary, others competing. The Delegation concluded by saying that it welcomed the constructive spirit in which the dialogue had taken place and that it looked forward to further discussions at the next meeting of the SCT.

162. The Delegation of India, speaking on behalf of the Asian and the Pacific Group, thanked the Chair for its hard work, congratulated it on its cheerfulness and serious sense of humor and extended its thanks to the Secretariat and the interpreters for providing excellent support during the meeting. Reporting that the Asian and the Pacific Group had participated in a constructive spirit during both formal and informal discussions, the Delegation added that it had consistently maintained its position that the capacity building went hand in hand with the obligations to reach the desired tangible results. The Delegation of India informed the SCT members that the Asian and the Pacific Group was a little disappointed that not much time had been spent on this critical part of the DLT, the issue of technical assistance being very important for the Asian and the Pacific Group as it would be useful in building capacity of intellectual property infrastructure for developing countries. Referring to its opening statement, the Delegation of India recalled that the Asian and the Pacific Group wished to see the provision of technical assistance in the proposed treaty through an article in the main body of the text. The Delegation reported that the majority of the members of the Asian and Pacific Group welcomed the new proposal of Article 3(1)(a)(ix) as presented by the Delegation of Nigeria on behalf of the African Group and that most of the members of the group saw merit in the new Article 1 *bis* presented by the Chair. The Delegation of India expressed the hope to see positive movement and progress on all issues reflecting diverse needs and priorities of all members in an inclusive manner in the thirty-fifth session of SCT, so that the draft DLT become bracketless and be taken to the diplomatic conference in 2017.

163. The Delegation of Nigeria, speaking on behalf of the Africa Group, wished to warmly thank the Chair for its very engaging workstyle, the Vice-Chairs, the Secretariat and the interpreters. The Delegation said that, considering that useful discussions had been held on all the agenda items during this SCT session, the African Group hoped that the next session of the SCT would allow the Committee to complete the discussion on the outstanding issues of disclosure requirement and technical assistance in the draft DLT. The Delegation expressed the hope that the SCT members would show flexibility and understanding during the period of reflection and consultations that would be held by Member States before the next session of the SCT, as there was a WIPO General Assembly direct duty to try to complete the discussions. The Delegation of Nigeria wished to thank delegations having supported the proposal by the African Group and required flexibility from delegations which had not see the merit for that proposal. On the other agenda item, namely trademarks and geographical indications, the Delegation of Nigeria stated that the African Group continued to urge the different delegations having concerns on those subjects for constructive solution to the different issues.

164. The Delegation of China thanked the Chair and Vice-Chairs for their help in advancing the process on the agenda items, as well as the Deputy Director General of WIPO and the interpreters for their assistance during this session of the SCT. The Delegation stated that, while believing that this session of the SCT had provided a chance to fully discuss and strengthen mutual respect among members, further exchange among all members should be made so as to reach a consensus on different issues. The Delegation announced that it looked forward to the next session where further progress could be made on the items. As far as the DLT was concerned, the Delegation was grateful for the new proposals and efforts made and added that it was committed to carefully consider these proposals and further discussing them, and making further contribution to the process.

165. The Delegation of Brazil, speaking on behalf of GRULAC, thanking the Chair for the efforts to move ahead with the important issues in our the agenda, stated that it was convinced that, during this session of the SCT, the way had been paved for the continuation and the deepening of the discussions that would be held during the next session. The Delegation concluded by announcing that the Chair could count on GRULAC.

166. The Representative of HEP said that it was proud to have seen the Chair chairing the SCT as it represented a whole continent as well as the French speaking world. The Representative stated that it had examined and would continue to examine with great interest the proposals according to the revised reference document. The Representative concluded by saying that it hoped that the work of the SCT could lead to the convening of a diplomatic conference in September 2017.

167. The Chair closed the session on November 18, 2015.

[Annexes follow]





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SCT/34/7  
ORIGINAL: ENGLISH  
DATE: NOVEMBER 18, 2015

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

**Thirty-Fourth Session  
Geneva, November 16 to 18, 2015**

SUMMARY BY THE CHAIR

### **AGENDA ITEM 1: OPENING OF THE SESSION**

168. The Chair of the SCT (Mr. Adil El Maliki, Morocco) opened the thirty-fourth session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.

169. Mr. Marcus Höpperger (WIPO) acted as Secretary to the SCT.

### **AGENDA ITEM 2: ADOPTION OF THE AGENDA**

170. The SCT adopted the draft Agenda (document SCT/34/1 Prov.3).

### **AGENDA ITEM 3: ADOPTION OF THE REVISED DRAFT REPORT OF THE THIRTY-THIRD SESSION**

171. The SCT adopted the revised draft Report of the thirty-third session (document SCT/33/6 Prov.2).

#### **AGENDA ITEM 4: INDUSTRIAL DESIGNS**

172. Further discussion took place on this Agenda item.

173. The Delegation of Nigeria, on behalf of the African Group, presented a new proposal for Article 3(1)(a)(ix), as contained in the Annex to the present document.

174. The Chair presented text for a new Article 1 *bis* on General Principles as contained in the Annex to the present document.

175. The Chair concluded that both proposals would be included between square brackets in a revised version of document SCT/33/2 for consideration of the thirty-fifth session of the SCT.

#### **AGENDA ITEM 5: TRADEMARKS**

176. The SCT adopted the Revised Reference Document on the Protection of Country Names Against Registration and Use as Trademarks (document SCT/34/2 Prov.2) as a reference document.

177. The Chair requested the Secretariat to prepare a new document, based on document SCT/34/2 for discussion at its thirty-fifth session under this agenda item, identifying different practices and approaches, and existing areas of convergence in regard of the protection of country names.

178. The SCT considered document SCT/34/3 and the Secretariat was requested to keep Member States informed of future developments in the Domain Name System.

#### **AGENDA ITEM 6: GEOGRAPHICAL INDICATIONS**

179. An exchange of views took place on this Agenda item.

180. The Chair noted that all points in this item will remain on the Agenda, to be addressed at the next session of the SCT.

#### **AGENDA ITEM 7: SUMMARY BY THE CHAIR**

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

#### **AGENDA ITEM 8: CLOSING OF THE SESSION**

182. The Chair closed the session on November 18, 2015.

[Annexes follow]

### **Article 3 Application**

(1) *[Contents of Application; Fee]* (a) A Contracting Party may require that an application contain some, or all, of the following indications or elements:

- (i) a request for registration;
  - (ii) the name and address of the applicant;
  - (iii) where the applicant has a representative, the name and address of that representative;
  - (iv) where an address for service or an address for correspondence is required under Article 4(3), such address;
  - (v) a representation of the industrial design, as prescribed in the Regulations;
  - (vi) an indication of the product or products which incorporate the industrial design, or in relation to which the industrial design is to be used;
  - (vii) where the applicant wishes to take advantage of the priority of an earlier application, a declaration claiming the priority of that earlier application, together with indications and evidence in support of the declaration that may be required pursuant to Article 4 of the Paris Convention;
  - (viii) where the applicant wishes to take advantage of Article 11 of the Paris Convention, evidence that the product or products which incorporate the industrial design or in relation to which the industrial design is to be used have been shown at an official, or officially recognized, international exhibition;
  - [(ix) a disclosure of the origin or source of traditional cultural expressions, traditional knowledge or biological/genetic resources utilized or incorporated in the industrial design;]*
  - (x) any further indication or element prescribed in the Regulations.
- (b) In respect of the application, the payment of a fee may be required.

(2) *[Prohibition of Other Requirements]* No indication or element, other than those referred to in paragraph (1) and in Article 10, may be required in respect of the application.

(3) *[Several Industrial Designs in the Same Application]* Subject to such conditions as may be prescribed under the applicable law, an application may include more than one industrial design.

(4) *[Evidence]* A Contracting Party may require that evidence be furnished to the Office where, in the course of the examination of the application, the Office may reasonably doubt the veracity of any indication or element contained in the application.

[Annex II follows]

**[Article 1bis<sup>23</sup>**  
**General Principles**

(1) *[No Regulation of Substantive Industrial Design Law] Nothing in this Treaty or the Regulations is intended to be construed as prescribing anything that would limit the freedom of a Contracting Party to prescribe such requirements of the applicable substantive law relating to industrial designs as it desires.*

(2) *[Relation to Other Treaties] Nothing in this Treaty shall derogate from any obligations that Contracting Parties have to each other under any other treaties.]*

[End of Annex II and of document]

[Annex II follows]

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<sup>2</sup> The text of this Article is based on the proposal made by the Chair at the thirty-fourth session of the SCT, contained in Chair Non-paper No. 1.

<sup>3</sup> Some delegations indicated that they were not supportive of either this proposed article or the proposed item (ix) of Article 3(1)(a).



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SCT/34/INF/1  
ORIGINAL: FRANCAIS/ANGLAIS  
DATE: 18 NOVEMBRE 2015 / NOVEMBER 18, 2015

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

**Trente-quatrième session  
Genève, 16 – 18 novembre 2015**

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

**Thirty-Fourth Session  
Geneva, November 16 to 18, 2015**

**LISTE DES PARTICIPANTS  
LIST OF PARTICIPANTS**

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prepared by the Secretariat*

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\* Sur une décision du Comité permanent, les Communautés européennes ont obtenu le statut de membre sans droit de vote.

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

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