

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

Thirty-Seventh Session
Geneva, March 27 to 30, 2017

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”, “the Committee” or “the SCT”) held its thirty-seventh session, in Geneva, from March 27 to 30, 2017.

2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Algeria, Argentina, Australia, Austria, Bahamas, Barbados, Belarus, Bhutan, Brazil, Bulgaria, Burundi, Cambodia, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Czech Republic, Cyprus, Denmark, Djibouti, El Salvador, Estonia, Finland, France, Ghana, Gambia, Georgia, Germany, Greece, Guatemala, Guinea, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Kenya, Kuwait, Lao People’s Democratic Republic, Latvia, Lebanon, Lesotho, Lithuania, Mali, Malta, Mauritania, Mexico, Monaco, Montenegro, Morocco, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, San Marino, Saudi Arabia, Senegal, Singapore, Slovakia, Somalia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Tuvalu, Uganda, Ukraine, Uruguay, United Arab

* This Report was adopted at the thirty-eighth session of the SCT.

Emirates, United Kingdom, United States of America, Zambia, Zimbabwe (100). The European Union was represented in its capacity as a special member of the SCT. Palestine was represented in its capacity as Observer.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Intellectual Property Organization (OAPI), African Union (AU), Benelux Organisation for Intellectual Property (BOIP), Food and Agriculture Organization of the United Nations (FAO), South Centre (SC), West African Economic and Monetary Union (WAEMU), World Health Organization (WHO), World Trade Organization (WTO) (8).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: *Association française des praticiens du droit des marques et modèles* (APRAM), Centre for International Intellectual Property Studies (CEIPI), China Trademark Association (CTA), European Law Student's Association (ELSA International), Intellectual Property Owners Association (IPO), International Association for the Protection of Intellectual Property (AIPPI), International Federation of Intellectual Property Attorneys (FICPI), International Trademark Association (INTA), International Wine Law Association (AIDV), Internet Corporation for Assigned Names and Numbers (ICANN), Japan Patent Attorneys Association (JPAA), Japan Trademark Association (JTA), MARQUES - Association of European Trade Mark Owners, Organization for an International Geographical Indications Network (oriGIn), Third World Network Berhad (TWN) (15).

5. The list of participants is contained in Annex II of this document.

6. The Secretariat noted the interventions made and recorded them.

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the thirty-seventh session of the SCT and welcomed the participants.

8. Mr. David Muls (WIPO) acted as Secretary to the SCT.

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

9. Mr. Adil El Maliki (Morocco) was re-elected Chair. Mr. Alfredo Carlos Rendón Algara (Mexico) was re-elected Vice-Chair, and Mr. Simion Levițchi (Republic of Moldova) was elected Vice-Chair.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

10. The SCT adopted the draft Agenda (document SCT/37/1 Prov. Rev.2).

AGENDA ITEM 4: ACCREDITATION OF A NON-GOVERNMENTAL ORGANIZATION (NGO)

11. The SCT considered document SCT/37/7.

12. The SCT approved the accreditation of the Centre for International Governance Innovation (CIGI).

AGENDA ITEM 5: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-SIXTH SESSION

13. The SCT adopted the draft Report of the thirty-sixth session (document SCT/36/6 Prov.).

General Statements

14. The Delegation of Senegal, speaking on behalf of the African Group, noted the holding of the information session on geographical indications that was scheduled to take place on March 28, 2017, and hoped that the session would enrich the resources available to SCT members. The Group regretted that the conclusion of the negotiations concerning the articles of the Design Law Treaty (DLT) during the 2016 WIPO Assemblies was merely to postpone the discussions until the upcoming 2017 WIPO General Assembly. The Group reaffirmed its position towards reaching an inclusive instrument that would take into account the concerns so legitimately expressed by members.

15. The Delegation of Colombia, speaking on behalf of the Group of States of Latin America and the Caribbean (GRULAC), restated the interest of its members in the constructive work of the Committee and thanked the Secretariat for the preparation of the Information Session on geographical indications. The Delegation recalled that the last WIPO Assemblies did not reach agreement on the convening of a diplomatic conference on the DLT and resent the matter to the 2017 Assemblies. GRULAC expected that an agreement would be reached and said that effective technical assistance and national capacity building continued to be of vital importance for the region, which included several developing countries. The Delegation noted that the protection of country names was extremely important to GRULAC, as these names could be successfully used in country branding schemes that would add value to products and services through the use of marks, especially in developing countries. Nevertheless, consistent protection for country names at the international level was lacking, as it was made clear in the Study prepared by the Secretariat for the twenty-ninth session of the SCT, with the purpose of determining the best possible practices for the protection of country names against registration as trademarks or elements of marks. The Group was committed to continuing the discussions on country names and expressed interest in the proposal presented by the Delegation of Jamaica in document SCT/32/2. GRULAC also looked forward to discussions on geographical indications with the view to continuing the analysis of various proposals under this agenda item.

16. The Delegation of Indonesia, speaking on behalf of the Asia and Pacific Group, looked forward to a successful information session on geographical indications. The session would be beneficial by further enhancing the common understanding about this discipline. It was expected that the session would allow delegations to learn from a diverse array of speakers, with different backgrounds, about the features, experiences and practices of geographical indication protection systems as well as their protection on the Internet, and the protection of geographical indications and country names in the Domain Name System (DNS). The Asia and Pacific Group attached great significance to intellectual property as an important catalyst to socio-economic and technological development, as well as an equitable and just international intellectual property regime, not only to promote innovation but also sensitive to the diverse developmental needs of Member States. The work of the Committee should not lose sight of this important concept and should work towards maintaining the equilibrium between the interests of the rightholders and the larger public welfare. The work of the SCT was to focus on finding a common landing zone among the Member States on the text of a possible DLT. Like any other international instrument, the implementation of the DLT should be accompanied with enhanced capacity of Member States to carry out the obligations arising out of the new Treaty. The proposed Treaty should address the important issue of capacity building in the intellectual property regimes of developing countries and Least Developing Countries (LDCs). Although

some members had expressed flexibility as to the placement of such a provision –either in the Treaty or in a resolution– most members of the Asia and Pacific Group favored placing the provision on technical assistance as an article in the main body of the proposed Treaty. The Delegation hoped that a consensus decision could be reached on the matter, which would satisfy all Member States. The Delegation noted that some members of the Group had expressed different positions on the issue of disclosure of source. Most members supported the principle that disclosure had an impact on the appearance of an industrial design. As sovereign Member States of WIPO, countries should have the flexibility to include, as part of the design eligibility criteria, components that are deemed part of the formalities for protection of industrial designs in their jurisdiction. The Group took note of the decision by the 2016 WIPO General Assembly that Member States would continue considering, during the 2017 General Assembly, the convening of a diplomatic conference for the adoption of a DLT. Such a Treaty was aimed at developing simplified standards for industrial design registration procedures and the diplomatic conference would take place at the end of the first half of 2018. The Asia and Pacific Group was ready to engage constructively with other groups towards resolving all outstanding issues and especially bridging the position gaps concerning Article 3(1)(a)(ix) and Article 22 of the DLT. The Delegation posited that Member States should have ample policy space to shape their industrial design protection system in accordance with national interests and in application of the TRIPS Agreement. The Asia and Pacific Group stood ready to discuss the proposal on industrial designs and new technologies, and welcomed the compilation document SCT/37/2 containing the analysis of the returns to the Questionnaire on Graphical User Interface (GUI). Regarding the extension of the Digital Access Service (DAS) to include applications for trademarks and industrial designs, the Group held the view that this would reduce the burdens on applicants when preparing the documents required for priority claims. The Group welcomed any updates on this matter and its members were ready take part in the related discussions. Furthermore, the Asia and Pacific Group hoped to see progress towards consensus on the protection of country names and geographical indications. There was a need for international action to prevent the undue registration or use of country names as trademarks, and the Group supported the proposal made by the Delegation of Jamaica for the development and future adoption of a Joint Recommendation. The Group had studied the note submitted by the Delegation of Iceland on the use of country names as word marks, which clearly demonstrated that country names seemed not to be offered sufficient protection in practice. The Group supported the proposal made by the Delegation of The United States of America to develop a survey on the existing national geographical indications regimes. The survey would enhance the understanding of the commonalities and differences in approaches to geographical indications protection adopted by various Member States. The report provided by the Secretariat relating to trademarks and the DNS provided very useful information about various services and procedures available to trademark owners to prevent bad faith registration or use of domain names. The Asia and Pacific Group requested the Secretariat to continue providing details about the specific tools and mechanisms deployed, if any, to facilitate affordable access to such services for users from the developing and least developed countries. The Group looked forward to constructive discussion and productive results in the deliberations during the thirty-seventh session of the SCT.

17. The Delegation of the European Union, speaking on behalf of the European Union and its member states, looked forward to the upcoming WIPO General Assemblies to reach a positive decision on the convening of a diplomatic conference for the adoption of the draft DLT. In the view of the Delegation, the draft text had achieved the required level of maturity in 2014, and it trusted that the matter would be given the priority it deserved in the General Assemblies debates. The European Union and its member states were committed to adopting a constructive approach in order to overcome all remaining differences among WIPO members. The Delegation also looked forward to the discussions on the Questionnaire on GUIs and Icons, at the current session, as this constituted a very topical and important subject. Concerning country names, the Delegation thanked the Secretariat for the compilation of the comments in relation to certain areas of convergence. The SCT should continue discussing the work

program in relation to geographical indications and the other documents on broader aspects of geographical indications, which had been tabled in previous sessions. The European Union and its member states were committed to developing a work program that would be acceptable to all WIPO members, in line with the 2015 General Assembly decision on the holding of an exchange of views in the SCT regarding several proposals concerning the protection of geographical indications in national systems and the protection of geographical indications and country names in the DNS. The Delegation, however, noted that the SCT should respect its mandate and avoid duplication of work already completed by the Committee or covered by existing treaties and intellectual property systems administered by WIPO. Furthermore, the SCT should not interpret nor revise the provisions of the Lisbon Agreement or the Geneva Act. Any future revision of the Geneva Act is the exclusive prerogative of the members of the Lisbon Union. The Delegation believed that the work program, in compliance with the SCT mandate, should focus on specific issues such as geographical indications in the DNS, as contained in document SCT/31/8 Rev.6. The European Union and its member states looked forward to the information session on geographical indications, which would address the features, experiences and practices of the different national and regional geographical indications protection systems, as well as their protection on the Internet and geographical indications and country names in the DNS. The program of the information session contained a wide range of speakers from different geographical locations, addressing the various systems of geographical indications protection from several angles and it therefore promised to be an interesting session.

18. The Delegation of Georgia, speaking on behalf of the Group of Central European and Baltic States (CEBS Group), restated the importance that the Group attached to the adoption of the DLT. The Delegation recalled the disappointment expressed during the previous session on the fact that Member States failed to reach consensus during the 2016 General Assemblies, based on considerations falling outside of the scope of the DLT. The Group said that the DLT was purely a formality simplification instrument for the benefit of Member States. The Group was not in favor of discussing the substantive provisions of the DLT and strongly believed that the work mandated by the General Assembly decision was successfully accomplished since the DLT had been mature for several years. The Delegation encouraged other SCT members not to enter into discussions on the remaining details until the diplomatic conference. At the outset, there were a number of important issues on the Agenda of the current Committee, including the Questionnaire on GUIs and Icons, concerning which the Group was willing to continue discussions. Additionally, the CEBS Group looked forward to constructive discussions in respect of finding convergences among the laws and practices of different Member States on the issue of country name protection. In relation to geographical indications, the Group expressed its willingness to engage in discussions on the basis of the documents presented to the Committee, in order to work out a balanced and inclusive work program. However, the Delegation stated that the work of the SCT should in no way interpret or review the provisions of the Lisbon Agreement or the Geneva Act. In the same vein, it looked forward to the information session on geographical indications, which in its view, would bring together the experiences and practices of different geographical indications protection systems, as well as developments concerning their protection on the Internet and geographical indications and country names in the DNS.

19. The Delegation of China recalled that the SCT was one of the important bodies in the Organization, which aimed at fulfilling the WIPO mandate to develop international intellectual property agreements. Since its establishment in 1998, the SCT had achieved a number of results that played an important role in building a balanced and effective multilateral system on trademarks, industrial designs and geographical indications. The Delegation hoped that further progress could be made through the joint efforts of all Member States. Concerning the DLT, the Delegation called upon all members to show more flexibility, by giving full consideration and understanding of each other's needs and concerns. The Delegation hoped that the DLT could be completed as soon as possible with positive results on technical assistance and the disclosure requirement. Full attention and consideration should be given to the proposals of a

large number of developing countries, with a view to reaching consensus and creating the favorable conditions to hold a diplomatic conference during the first half of 2018. To provide for additional flexibility, the Delegation suggested allowing for reservations to be formulated on the draft provisions which had not been agreed by all. The Delegation supported the survey and study on GUI, icon and typeface/type font designs. The Delegation also supported the extension of the DAS to Industrial Designs in order to facilitate the work of applicants and reduce the burden in preparing relevant priority documents. On geographical indications, the Delegation favored further work to lay a sound foundation for a more inclusive geographical indications system.

20. The Delegation of Sri Lanka aligned itself with the statement made by the Delegation of Indonesia on behalf of the Asia and Pacific Group. As a body mandated to discuss the international development of the law of trademarks, industrial designs and geographical indications, including the harmonization of national laws and procedures, the SCT should reach a balanced outcome, which was vital to ensure that all countries benefited from its work. Sri Lanka took note of the progress made in the Committee discussions and the decision taken at the WIPO General Assembly to continue considering the convening of a diplomatic conference for the adoption of a DLT, at the end of the first half of 2018. The Delegation believed that adequate provisions on capacity building for developing countries and LDCs to meet the obligations of the draft Treaty would contribute to achieve the desired outcome. The Delegation welcomed the progress made by the Committee, within its mandate, on discussions relating to geographical indications. In that context, it took note of the document prepared by the Secretariat entitled "Protection of Country Names Against Registration and Use as Trademarks: Practices, Approaches and Possible Areas of Convergence" (SCT/37/3) and the proposal made by the Delegation of the United States of America to develop a survey on the existing national geographical indications regimes, which would contribute to enhance the understanding of the commonalities and differences in approaches to geographical indications protection adopted by various Member States. While taking note that there was a need for international action to prevent the undue registration or use of country names as trademarks, the Delegation also expressed its support to the proposal made by the Delegation of Jamaica for the development of a future Joint Recommendation by the SCT (document SCT/32/2) and hoped that the Committee would work constructively with all members to find a balanced approach to address the issue. Sri Lanka recognized the importance of intellectual property as an important tool for technological advancement as well as socio-economic development. Sri Lanka was currently in the process of integrating intellectual property into its national policy formulation, with special emphasis on innovation, science, technology and creativity, as a means of attaining economic development and empowerment through the implementation of a ten-points action plan in cooperation with WIPO. The Delegation wished to place on record its sincere appreciation of the valuable cooperation extended by WIPO in developing and supporting the implementation of the action plan, which could serve as a model to countries that were similar to Sri Lanka. A coordination mechanism had been created in 2016 to implement the action plan, a National Steering Committee on Intellectual Property (SCIP) had been convened in July 2015, and since then, there was a frequent exchange of views between the SCIP and WIPO officials through video conferences that were held every two months to assess the progress in the implementation of the ten-points action plan. Under the action plan, Sri Lanka had outlined several development activities to be implemented within the next two years, which included the following: integration of intellectual property into the innovation policy formulation in Sri Lanka, the development of the capacity and resources of the National Intellectual Property Office (NIPO), the creation of an Innovation Index, the development of an intellectual property hub, the implementation of the Intellectual Property and Tourism project, the development of local expertise in Traditional Knowledge (TK) with the objective of drafting a national policy on Traditional Knowledge, Traditional Cultural Expressions (TCE) and Genetic Resources (GR), the Organization of effective programs to uplift and strengthen collective management societies (CMOs), the development of a national strategy for building respect for intellectual property and the effective enforcement of intellectual property rights (IPRs) in the

interest of social and economic development and consumer protection, and incorporating certain amendments to the national intellectual property law for the protection of geographical indications. The Delegation was pleased to inform that in 2017, the Cabinet of Ministers had approved amendments to the Intellectual Property Act No. 36 of 2003, which aimed to facilitate the registration of geographical indications in Sri Lanka and to safeguard the interests of the producers and exporters of Ceylon Tea and Ceylon Cinnamon. A proposed amendment as an interim measure to protect geographical indications had been published and would be submitted to the approval of the Parliament in the next two months, as NIPO was preparing the issuance of geographical indications registration certificates accordingly. The Delegation thanked the Director General for his continued support and the cooperation extended to Sri Lanka in its intellectual property related activities, and expected that such cooperation would continue. The Delegation looked forward to fruitful deliberations during the session, to which it would contribute with a constructive spirit.

21. The Delegation of Turkey, speaking on behalf of Group B, noted that regrettably, the decision to convene a diplomatic conference for the adoption of a DLT had not been taken during the 2016 General Assembly, despite the advanced level of maturity of the draft text and hoped that a positive outcome could be reached during the 2017 General Assembly. Against this background, Group B held the view that further discussions on the DLT would not constitute a productive use of the Committee's time, which should be devoted to other issues on the Agenda, including the questionnaire and the corresponding analysis on the GUI, icon and typeface/type font designs, as well as the protection of country names and the examination of different systems for the protection of geographical indications. New technology-related designs such as the graphical user interface and icon designs as well as typeface and type font designs in applications were playing an important role in commerce and innovation and formed a significant percentage of all industrial design filings. These numbers continued to increase and Group B looked forward to discussing that agenda item, as well as how intellectual property offices were dealing with those designs. The Delegation said that country names in the area of trademarks and domain names was a long-debated issue. The Group took note of the updated document SCT/37/3 that was based on national submissions for which it thanked the members who had shared their national experiences and expected a useful discussion during the thirty-seventh session. The Group also took note of the proposal made by the Secretariat in document SCT/37/4 on trademarks and international non-proprietary names for pharmaceutical substances (INNs), and looked forward to the presentation of that document. On geographical indications, the Group expected a constructive discussion and believed that the information session would be useful for members to examine and share experiences regarding different systems of protection.

22. The Delegation of Morocco stated that it attached great importance to the adoption of a treaty concerning the simplification of design registration procedures and called upon Member States to show additional flexibility in their negotiations. The Delegation hoped that a consensus could be found on the outstanding issue of the diplomatic conference for the adoption of the DLT. It believed that the enhancement of capacities of developing countries and the provision of technical assistance would be key features to enable those countries to apply the Treaty. The Delegation valued the discussion on country names and considered that protection of those names against registration as trademarks or elements of trademarks required the establishment of best practices. Undoubtedly, an information session on the experiences and practices of national and regional laws concerning geographical indications and their protection, as well as geographical indications on the Internet and in the DNS, would be important given the expertise of the panelists.

23. The Delegation of Tunisia endorsed the statement made by the Delegation of Senegal on behalf of the African Group and restated its interest in the Agenda of the Committee and in particular the draft DLT, the protection of country names against registration or use as trademarks and the protection of geographical indications. The Delegation underlined the

importance of the DLT as an instrument that was intended to simplify and harmonize the procedures for industrial design applications for the benefit of creators and enterprises. Therefore, it was necessary to bring together diverse points of view, in anticipation of the upcoming General Assemblies. The Delegation highlighted its commitment towards the protection of country names, and hoped that conclusions could be reached for the effective protection of country names at the international level. The Delegation thanked the Secretariat for the organization of the information session on geographical indications, which constituted a golden opportunity to enrich the debate on this matter.

24. The Delegation of Uganda aligned itself with the statement delivered by the Delegation of Senegal on behalf of the African Group. It welcomed the convening of an information session on geographical indications, the protection of which offered positive benefits for developing countries by encouraging the preservation of diversity, natural resources and inventive capacities of local communities. The Delegation underscored the limited membership of the Lisbon Union and the existing disparities in the protection of geographical indications amongst WIPO Member States. Therefore, it hoped that the information session would enable members to understand the different geographical indications protection systems and help the members build a momentum on what work to pursue in order to reach geographical indications protection. The Delegation took note of the decisions of the General Assemblies in 2015 and 2016 on the convening of a diplomatic conference for the adoption of a DLT. Since 2015, differences remained, since issues of great concern for the broad membership were still outstanding. The Delegation recalled that no substantive discussions had been undertaken on those issues, despite the willingness of the broad membership to discuss them. The Delegation considered that those issues would guarantee that the Treaty was inclusive, balancing the interests of all members. The question of the mandatory disclosure of the source of genetic resources and traditional knowledge used in industrial designs fit well within the structure of the Treaty, since this was a procedural matter. The Delegation stood ready and willing to engage constructively in discussions on all outstanding issues, including technical assistance, and remained confident that a consensus could be reached prior to next the General Assembly.

25. The Delegation of Saudi Arabia thanked the Secretariat for the preparation of the documents, in particular relating to the questionnaire on the GUI, icon and typeface/type font designs. It also underlined the importance of the protection of country names.

26. The Delegation of Indonesia, speaking in its national capacity, aligned itself with the position of the Asia and Pacific Group. Not only did an equitable and just international intellectual property regime promote innovation, but it was also adjustable to the diverse developmental needs of the Member States. Hence, the work of the Committee should not lose sight of this important concept and should work towards maintaining the equilibrium between the interests of the right holders and the larger public welfare. The Delegation looked forward to the information session on geographical indications and informed the Committee that Indonesia had recently adopted its new Trademark and Geographical Indications Law (Law No. 20 of 2016), replacing Law No. 15 of 2001 on Trademarks. In addition to providing protection to trademarks in a more timely and cost-efficient manner, the new law also provided detailed explanations on the registration and protection of geographical indications. Indonesia was very proud of its long-standing and respected culinary practices, artisanal tradition and local expertise underlying product names. The Delegation believed that geographical indications constituted a way of protecting those practices while at the same time boosting economic development, contributing to job creation, increasing the incomes of farmers as well as improving the social strengths of communities. In that regard, the Delegation expressed great interest to see progress in the area of geographical indications. Regarding the draft DLT, it said that the proposed text should address the question of technical assistance and capacity building for developing countries and LDCs, since the Committee had a mutual understanding about the importance of this matter. The Delegation hoped that a decision could be reached through consensus that would satisfy all Member States. Regarding the principle of disclosure of the

source that had an impact on the appearance of an industrial design, the Delegation believed that Member States should have the flexibility to include, as part of the design eligibility criteria, components that were considered important to complete the formalities for protection of industrial designs within their jurisdictions. Indonesia took note of the decision adopted in the 2016 WIPO General Assembly to the effect that Member States would continue considering, during the 2017 General Assembly, the convening of a diplomatic conference for the adoption of a DLT. However, it believed that efforts to find agreement on pending issues needed to be explored. The Delegation announced itself ready to engage constructively towards a complete resolution of the outstanding issues before the 2017 General Assembly. In addition, the Delegation thanked the Secretariat for the compilation document SCT/37/2 containing an analysis of the returns to the Questionnaire on GUI, icon and typeface/type font designs and also thanked the Member States that had responded to the questionnaire. Having studied document SCT/37/3 on the protection of country names, as well as the Note submitted by the Delegation of Iceland on the use of country names as word marks, the Delegation noted that these documents seemed to demonstrate that country names were not offered sufficient protection in practice. The Delegation also noted the update on trademarks and the DNS in document SCT/37/5. In relation to document SCT/37/4, the Delegation of Indonesia held the view that it was critical to ensure that trademarks similar to INNs or common stems were not registered.

27. The Delegation of the Republic of Moldova said that the draft DLT was a good draft document which would need to be discussed during the diplomatic conference. The Delegation considered that the Committee should continue the discussion concerning the protection of new designs such as GUI, icon and typeface/type font designs which were important for companies in developing new technologies. It was important to discuss a way to better protect country names, not only against their registration but also their use as trademarks. The Delegation underlined the importance of the information sessions and the issues on geographical indications for national offices and for users.

28. The Delegation of the Republic of Korea endorsed the opening statement delivered by the Delegation of Indonesia on behalf of the Asia and Pacific Group. The Delegation noted that due to the continuous efforts of the Member States, the DLT had reached significant progress. Harmonizing filing and registration procedures would make it easier for right owners to protect their rights. The Delegation believed that the simplification of formal procedures for design applications and registrations would be a precious tool for design creators around the world and the Treaty could benefit not only large enterprises but also small and medium-sized companies and individuals in all Member States. The Delegation thus considered that the disclosure requirement in design applications for subject matter that used or was directly based on traditional knowledge, traditional cultural expressions or genetic resources would not be appropriate in the process of organizing formalities, considering that disclosure was a substantive requirement which would affect the registrability of designs rather than constituting a formality. Regarding the new technology designs such as GUI, icon and typeface/type font designs, the Delegation noted that the examination practices were significantly different from country to country and therefore believed that discussions were necessary. The Design Protection Act of Korea had been amended to introduce the DAS and it was expected to enter into force soon, while the current examination system was being fine-tuned following that amendment. The Delegation believed that using the DAS in the industrial design context would benefit applicants all over the world, and fully supported introducing the DAS with regard to industrial designs. The Republic of Korea supported the principle of country name protection, as this was already foreseen under the Korea Trademark Act and the Unfair Competition Prevention and Trademark Protection Act, which were in line with the proposal made by the Delegation of Jamaica to refuse trademarks constituted by country names and false indications. However, the existence of prior trademark rights should also be considered, and the Delegation would express its position in further detail in the discussion of the possible areas of convergence. With regard to the protection of geographical indications, the Republic of Korea

supported the proposal made by the Delegation of the United States of America to discuss geographical indications issues in the framework of the SCT. Given that the protection system for geographical indications was different from country to country, it was crucial to first understand the geographical indications protection system of each country before introducing an international registration system. The Delegation stated that since the protection of geographical indications had a legal and economic impact on WIPO Member States, it would be necessary for those members to discuss and express their opinion on this issue. In that regard, the information session on geographical indications would constitute a good opportunity to deepen the understanding of the Committee about the existing protection systems.

29. The Delegation of Nigeria hoped that a positive and comprehensive conclusion of the discussions on industrial designs and in particular on the DLT was reached as well as advances on other agenda items, namely trademarks and geographical indications.

30. The Delegation of Zambia endorsed the position of the African Group and informed the Committee that Zambia was currently repealing and replacing its Trademarks Act of 1958. The Delegation believed that the session would be informative for its process of strengthening and broadening the national Trademarks Act by including geographical indications and domain names. The Delegation had read the Note submitted by the Delegation of Iceland and would report the issue to its national authorities.

31. The Delegation of Brazil aligned itself with the statement made by the Delegation of Colombia on behalf of GRULAC. Concerning the DLT, the Delegation hoped that members would be able to agree on adequate language that would address the different requests of Member States and would find the necessary convergence for discussing the convening of a diplomatic conference during the upcoming 2017 General Assembly. On technical assistance, the Delegation understood that the implementation of a future DLT would require technical cooperation for adapting national legal practices and procedures to the requirements of the Treaty. These provisions should provide clear guidance and legal certainty to members so that cooperation activities could be carried out by the Secretariat in close dialogue with the recipient countries. This was an important area to be reflected in an article of the Treaty, in line with the relevant Development Agenda recommendations. The same view was expressed by the Delegation of the Russian Federation, on behalf of BRICS member States (Brazil, Russian Federation, India, China and South Africa) during the 2016 General Assembly and the Delegation of Brazil wished to reiterate its support for that opinion.

32. The Delegation of Iran (Islamic Republic of) associated itself with the statement delivered by the Delegation of Indonesia on behalf of the Asia and Pacific Group. With regard to the draft articles of the DLT, it recognized the current gap in the positions regarding technical assistance and mandatory disclosure requirements. The Delegation posited that it was necessary to include those items in the Treaty as legally binding provisions. In its view, inclusion of these issues as specific provisions in the main body of the instrument would facilitate the accession of developing countries and LDCs to the new Treaty and help them to make effective use of it. Bearing in mind the decision of the 2016 General Assembly, the Delegation expressed its willingness to engage in a constructive discussion towards reaching consensus among all Member States with regard to the outstanding issues before the next General Assembly, since prior settlement of differences would ensure the success of any possible future step.

AGENDA ITEM 6: INDUSTRIAL DESIGNS

Industrial Design Law and Practice – Draft Articles and Draft Regulations

33. The Chair, referring to documents SCT/35/2 and 3 and recalling the decision of the 2016 WIPO General Assembly and his conclusion at SCT/36, reminded the Committee that

consideration of the convening of a diplomatic conference for the adoption of the DLT remained on the Agenda of the forthcoming WIPO General Assembly. Observing that no delegation wished to take the floor, the Chair noted that the situation remained unchanged and that the decision on the DLT was in the hands of the WIPO General Assembly. Recalling his appointment as facilitator at the previous WIPO General Assembly, the Chair expressed his readiness to further help Members States, outside of the framework of the SCT, in their discussions on that agenda item.

34. The Delegation of Indonesia stated that it welcomed the Chair's initiative. Underlining the need to make efforts to reach an agreement on pending issues before the 2017 WIPO General Assembly, the Delegation expressed its willingness to engage constructively in consultations or informal discussions, so as to bridge the reasonably narrow gaps concerning the draft text of the DLT.

35. The Chair recalled his conclusion at SCT/36 that, "while the DLT would remain on its Agenda, the SCT should abide by the decision of the General Assembly"[†], and encouraged delegations to make use of the time available until the next session of the General Assembly in October 2017 to bridge remaining gaps.

Graphical User Interface (GUI), Icon and Typeface/Type Font Designs

36. Discussions were based on documents SCT/36/2 Rev. and SCT/37/2.

37. The Secretariat introduced document SCT/36/2 Rev.

38. The Delegation of Indonesia, thanking the Member States for their responses to the questionnaire and the Secretariat for document SCT/37/2, observed that the final paragraph of document SCT/37/2 suggested the existence of convergence of national laws with regard to the recognition of GUI, icon and typeface/type font designs, their protection and formality requirements. Noting that 59 Member States, two IGOs and five NGOs had responded to the questionnaire, the Delegation wondered whether the terms "all jurisdictions", used in the conclusion of the document, referred to all jurisdictions of WIPO Member States or only to the responding jurisdictions. As, in its view, the responses did not represent a sample size of the diversity of WIPO Member States, the Delegation concluded that further analysis and discussion by the Committee on the issue were needed before moving forward.

39. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Secretariat for the updated compilation of the replies to the questionnaire on GUI, icon and typeface/type font designs, contained in document SCT/36/2 Rev., and for the analysis, contained in document SCT/37/2, and declared that it recognized the economic importance of ensuring adequate protection for those new technological designs. In its view, document SCT/37/2 and its annex provided a very useful overview and analysis of the systems used to protect GUI, icon and typeface/type font designs. While it was encouraging to notice much common ground in the approach taken on the various issues raised in the documents, the Delegation observed, however, that divergences had also been identified in the documents, notably as to additional or special requirements for the representation and eligible subject matter for protection of GUIs and icons only appearing temporarily. Moreover, the analysis revealed a lack of a clear tendency as to the scope of protection of GUIs and icons, and, in particular, as to whether protection was granted regardless of the product in question. Finally, the Delegation noted that differences in the examination of

[†] The 2016 General Assembly decided that "at its next session in October 2017, it will continue considering the convening of a diplomatic conference on the DLT, to take place at the end of the first half of 2018."

substantial requirements between jurisdictions did not appear to be specific to GUIs and icons only, since they could apply to all types of designs. The Delegation concluded by expressing its openness to consider further work on the topic.

40. The Delegation of Georgia, speaking on behalf of the CEBS Group, expressed its gratitude to the Secretariat for the analysis of the returns to the questionnaire. The Delegation declared that document SCT37/2 was extremely informative, as it helped understand the current framework in various systems and constituted a useful reference for intellectual property offices and users. Looking forward to further exploring the document and finding the best ways to effectively protect such designs, so as to build a sound document, the Delegation expressed the CEBS Group's interest in hearing valuable considerations of other delegations.

41. The Delegation of the United States of America thanked the Delegations of Israel and Japan for their collaboration on the proposal having led to the work under consideration, the Secretariat for the preparation of documents SCT/36/2 Rev. and SCT/37/2, and Member States, IGOs and NGOs for their replies and contributions to the questionnaire. In the Delegation's opinion, documents SCT/36/2 Rev. and SCT/37/2 together formed one of the most globally comprehensive descriptions of the current practice, laws and regulations in relation to GUI, icon and typeface/type font designs. Turning to the analysis contained in document SCT/37/2, the Delegation highlighted the high frequency of protection of those types of designs across the globe and pointed out that protection was provided for GUIs and icons in 97 per cent of the responding jurisdictions, and for typeface and type font designs in 90 per cent. GUIs and icons could be protected under multiple IPRs in 79 per cent of the responding jurisdictions, and typeface and type font designs in 76 per cent. Concerning application requirements, the Delegation noted that black and white, as well as color photographs, were accepted in nearly all responding jurisdictions and that the vast majority of responding jurisdictions also accepted some form of drawings, technical or otherwise. Focusing on innovative application formats admitted by intellectual property offices, the Delegation pointed out that, in contrast with the three responding jurisdictions accepting other formats, such as video or 3D image files, 100 per cent of responding jurisdictions accepted a sequence of static images for animated GUIs or icons, which had become an increasingly popular subcategory of designs. In the Delegation's viewpoint, those statistics could suggest the emergence of a significant opportunity for intellectual property offices to consider modernizing the types of application formats, in order to allow applicants to better depict their designs with the recent technological developments having brought computer applications to the forefront. Furthermore, the Delegation observed that the majority of responding jurisdictions did not require disclaimers for letters, numerals, words or symbols contained in a GUI or icon, and that the fact that a design was only temporarily shown did not prevent applicants from seeking protection for it. Moreover, for the Delegation, the replies revealed that it was more common than not, in responding jurisdictions, for GUI, icon and typeface/type font designs to have the same eligible criteria and the same duration of protection as other types of designs and to not be limited in their protection to only one product. Finally, underlining the importance of users' feedback, desires and needs for the future, the Delegation was of the view that users would be grateful to be given significant flexibility in determining which of a variety of imagery-photographs, line drawings, moving images files-best represented their designs. Considering that there was an opportunity for intellectual property offices to accommodate users' desires with respect to new technological designs, the Delegation concluded by saying that it looked forward to hearing feedback by other delegations on the topic.

42. The Delegation of Switzerland, thanking the Secretariat for the analysis of the replies to the questionnaire on GUI, icon and typeface/type font designs, contained in document SCT/37/2, noted that, in most responding jurisdictions, protection of those designs was already provided. That was the case in Switzerland, like in most other Member States. Considering that the current system worked, the Delegation pointed out that Class 14.04 had been created under the Locarno Classification to that effect. Although, in its opinion, no further

work on the subject was needed, as protection of that type of designs was already granted by existing rules, the Delegation nevertheless expressed its readiness to hear, and participate in, the discussions in a constructive way.

43. The Delegation of China, expressing its gratitude to the Secretariat for its considerable work in compiling the replies to the questionnaire, declared that the analysis of the replies provided useful information enabling Member States to understand developments in the area. Informing the SCT that China continued to gain experience on GUIs and icons, the Delegation considered that further examination of the protection of typeface and type font designs was needed, and announced that it would continue to follow the developments in that area.

44. The Delegation of Israel, thanking the Secretariat for the very useful compilation of replies and the SCT members for their contributions, expressed support for further informational work on the protection of GUIs, icon and typeface/type font designs. Stating that the WIPO questionnaire's results had already had practical implications in Israel, in the framework of the ongoing legislative process to enact a new industrial design law, the Delegation reported that those results had been cited several times in the parliamentary debates, as a reference point with respect to the protection of GUIs and icons. With regard to typeface designs, the Delegation explained that the original bill had provided for their protection by a combination of registered design right and anti-copy unregistered design right. However, intense parliamentary debates had taken place in Israel, as typeface makers, seeing themselves as artists, had objected to be considered as designers and had persuaded the parliament to protect their works under the copyright system, although the latter would be of a limited scope and duration, moral rights of credit would not be required, certain end users' safe harbor would be provided, as well as limitations and derivative rights, to incentivize innovation in a crowded field. With regard to GUIs and icons, the Delegation reported that the parliamentary debate was still ongoing and was focusing particularly on the degree of overlapping protection, if any, with copyright. Furthermore, observing that the same terms, such as "novelty" or "prior art", were used by all, but not always with the same meaning, or that, with respect to copyright, different levels of originality and creativity were required, the Delegation believed that it could be useful to develop a common language for further discussing the issues, by selecting specific cases or fact patterns and asking countries to explain how they would protect them under their respective legal systems. That would enable the Committee to determine whether SCT members, using the same terminology with different meanings, would reach the same result.

45. The Delegation of Brazil, thanking the Secretariat for the preparation of document SCT/37/2 and its annex, informed the SCT that the Brazilian Institute of Industrial Property had submitted replies to the questionnaire, which, hopefully, would further contribute to the discussion on the topic. Hoping that the SCT would continue to provide Member States with information, the Delegation was of the view that discussions should be restricted to the sharing of experience between delegations, since the current international framework already provided adequate flexibility for ensuring the protection of new technological designs. That was evidenced, notably, by the different Member States' approaches to the possible industrial design/copyright overlap or to the special requirements for animated GUIs and icons, both issues being treated with considerable differences among national legislations. Stating that discussions on the agenda item under consideration should preserve Member States' policy space to adapt their national legal requirements and practice to an evolving environment, the Delegation declared that it looked forward to constructively participating in the exchange of views.

46. The Delegation of the Republic of Moldova, expressing its appreciation for the opportunity to discuss the topic within the SCT, stated that it had submitted its replies to the questionnaire, including some examples issued from its national practice. In its view, the compilation of replies and related analysis provided comprehensive information on the subject and was useful, not only to users, who could notice that GUIs were protected in almost all responding jurisdictions,

but also to intellectual property offices, while considering legal provisions for the protection of GUIs. The Delegation concluded by saying that the development of new technologies would increase the number of applications for industrial designs.

47. The Delegation of Japan, expressing its gratitude to the Secretariat for having drafted the questionnaire, sent it to each Member State, collected the replies and issued documents SCT/36/2 Rev. and SCT/37/2, stated that the documents enabled users to be informed on the method of filing applications, the requirements for protection and the contents of protection in each Member State, with respect to GUI, icon and typeface/type font designs. Because of Member States' contributions, the documents had become useful to understand the system of protection in other Member States and to improve the predictability for users in acquiring rights for those types of designs. Underlining the fact that the analysis of the replies to the questionnaire also constituted informative material, which allowed each Member State to comprehensively understand and evaluate the contents, requirements and procedures for protecting GUI, icon and typeface/type font designs in other Member States, the Delegation expressed the wish to continue studying the topic.

48. The Representative of INTA, lending its support to the Committee's work on GUI, icon and typeface/type font designs, declared that it was pleased to note that protection for GUIs and icons was already provided in 97 per cent of the replying jurisdictions and for typeface/type font designs in 90 per cent. In the last 10 years, an obvious and acknowledged surge in the use of GUIs, icons and fonts had occurred in many industries around the world. Consumers had learned to associate a particular GUI, icon or font with particular producers of goods or service providers. In its view, since GUI, icon and typeface/type font designs had become important differentiators between products in the marketplace, providing protection for those types of designs also encouraged a technological and economic development. While considering that design law was a good tool to provide short-term protection for GUIs, icons and fonts, the Representative further advocated that the provision of design law protection should be without prejudice to the protection appropriately provided under other laws, such as copyright law, trademark law or the law on unfair competition or passing off. Those forms of protection should sit side-by-side. Concerning the representation in design applications, the Representative was of the view that users were best placed to determine how to disclose an innovative design for the purpose of applying for its protection and, therefore, advocated for users' choice and for as few restrictions as possible on what a designer could file when seeking protection for GUIs, icons and fonts. As rights could be lost in case of rejection of the application on a technical matter, such as the nature of the representation, the Representative pointed out that a designer, especially an individual designer or a small and medium-sized enterprise (SME), could be disadvantaged if a design application filed abroad was rejected because of the use of a "wrong" representation, even though that representation had been accepted in the home jurisdiction. Therefore, INTA advocated that color photographs, black and white photographs, drawings, including technical drawings, and other graphic representations, including CAD and video or moving files, all be acceptable forms of representation of GUIs, icons and fonts, so long as the information accurately represented the design. In addition, there should be no additional requirements for animated GUIs, icons or fonts. Concerning fonts, while admitting that additional requirements could be necessary to ensure the full disclosure of the design and to enable users to understand, without undue difficulty, what was protected, the Representative acknowledged the additional requirements for fonts in various Member States such as, for example, including all the letters of the relevant alphabet in the font in upper or lower case, if relevant, as well as numbers. Finally, since transfers of GUIs, icons and fonts across technology means was essential, the Representative was of the opinion that, to be real and future-proofed, protection for those types of designs should not depend on the product that incorporated them. Consequently, designers should be able to register the GUI or icon in the abstract. The Representative concluded by congratulating the Committee and the Secretariat for having embarked on that important work.

49. The Delegation of the United States of America said that it would benefit from further information on offices' practice and users' preferences with regard to applications for GUI, icon and typeface/type font designs. Expressing its interest in learning more details and seeing demonstrations from jurisdictions accepting video files, moving image files, wave files, 3D imagery, that could potentially be manipulated by examiners or reviewers, the Delegation stated that it was in favor of the proposal by the Delegation of Israel to further study commonalities in the language, so as to better understand the terms used by SCT members and their meaning. A hypothetical application to selected specific fact patterns would be a constructive and educational way to address the questions. In addition, as it was also interested in learning in more detail about recommendations put forward by users groups on the application process relating to those types of designs, the Delegation proposed that an information session on GUI, icon and typeface/type font designs be planned for the next session of the SCT. The Delegation pointed out that, in the past, information sessions had been organized by the SCT to allow a deeper dive on topics of interest. In its view, the session could focus, in particular, on office handling of those types of designs, moving image files, video files, e-publishing and e-registration, and be divided into two panels, one for Member States and the other one for users groups.

50. The Delegation of the Republic of Korea, noting the considerable differences in design practices between Member States, notably as to formalities, examination guidelines and representation of the design, reported that its intellectual property Office (KIPO) had introduced the protection of a screen design in the new graphic design protection since 2003 and had expanded the scope of protection. Hoping for further active discussions on new technological designs within the SCT, the Delegation seconded the proposal by the Delegation of the United States of America. In the Delegation's view, sharing practices and experiences on the protection of new technological designs through an information session would be beneficial and useful for Member States.

51. At the Chair's request, and in response to the question raised by the Delegation of Indonesia, the Secretariat confirmed that the terms "all jurisdictions", used in document SCT/37/2, referred to all jurisdictions having responded to the questionnaire, as mentioned in paragraph 5 of the document. Then, the Secretariat presented document SCT/37/2, recalling that the questionnaire on GUI, icon and typeface/type font designs was divided in four parts:

– Referring to Part I of the questionnaire, "*Systems of Protection*", the Secretariat pointed out that protection for GUI, icon and typeface/type font designs was provided in almost all responding jurisdictions. In the vast majority of jurisdictions, protection was available under several laws, the most frequent combination being design law/patent law, copyright law and trademark law.

– Turning to Part II of the questionnaire, "*Application for a Design Patent/Industrial Design Registration*", the Secretariat reported that, in almost all jurisdictions, GUI, icon and typeface/type font designs could be represented in black and white or in color photographs. Drawings, including technical drawings, were admitted in many jurisdictions. Other graphic representations, such as computer drawings or CAD drawings, were also accepted in about 40 per cent of the replying jurisdictions. Three jurisdictions accepted other formats, such as video or audio files or 3D model files. The Secretariat further underlined that several forms of representation were admitted in the vast majority of jurisdictions. Concerning animated GUIs or icons, the Secretariat pointed out that one third of jurisdictions provided for additional or special requirements. In those jurisdictions, the requirement of series of static images showing a sequence of an animated GUI or icon was unanimously accepted, but other additional or special requirements were also mentioned in the replies, such as, for example, a description or a statement of novelty. Moreover, the Secretariat noted that a GUI or icon could be patented or registered as such in more than two-thirds of jurisdictions. In those jurisdictions, the most

widespread ways of representing the GUI or icon as such were either the representation of the GUI or icon alone or the representation in solid lines plus the product that embodied the design in dotted or broken lines. Finally, the Delegation indicated that more than two-thirds of the responding jurisdictions did not exclude a GUI or icon from protection if appearing only temporarily when a program was loaded.

– Referring to Part III of the questionnaire, “*Examination of the Application*”, the Secretariat underlined that nearly all responding jurisdictions had indicated that the eligibility criteria for GUI, icon and typeface/type font designs were the same as those applied to other industrial designs.

– Finally, concerning Part IV of the questionnaire, “*Scope and Duration of Protection*”, the Secretariat observed that, in the majority of the replying jurisdictions, the scope of protection was not limited by the classification of the industrial design. In more than half of the jurisdictions, if a GUI or icon was protected in relation to one product, the protection extended to its use in relation to another product. The duration of protection of GUI, icon and typeface/type font designs was generally the same as the duration of protection of other industrial designs.

52. The Delegation of Indonesia, thanking the Secretariat for the compilation of the replies and the clarification about the terms “all jurisdictions”, wondered whether the terms “all jurisdictions that responded to the questionnaire” could expressly be used throughout the document. Turning to the conclusion of the document, the Delegation said that it still wondered whether it applied to all WIPO Member States or only to the responding jurisdictions.

53. The Chair noted the comments made by the Delegation of Indonesia, which would be reflected in the document.

54. The Delegation of Canada, thanking the Secretariat for the preparation of the documents, declared that it strongly supported the proposal aiming at asking leaders in the sector to present their Office practices and procedures at a future SCT meeting or information session. The Delegation added that an information session or seminar to recognize animated designs would benefit the Canadian Intellectual Property Office (CIPO), which had recently implemented a practice change to accept those designs and was continuously looking to improve its practices and procedures.

55. The Chair suggested, firstly, to re-open the questionnaire on GUI, icon and typeface/type font designs to enable Member States to submit additional and/or revised replies, including relevant examples. Secondly, as some delegations had expressed the wish to have an information session on GUI, icon and typeface/type font designs, the Chair proposed requesting the Secretariat to organize a half-day information session, so as to provide information to SCT members on the points of view and practices of various intellectual property offices and users.

56. The Delegation of Israel, lending its support to an information session on the topic, wondered whether a one-day session would not be more comprehensive and whether academics could also present a comparative law background on the issue. The Delegation further suggested analyzing hypothetical cases under various systems to develop a common language.

57. The Delegation of the Republic of Moldova expressed its support for an information session, which could include practical examples on the use of the classification.

58. The Delegation of the United States of America, seconding the Chair’s proposal, wondered whether NGOs would also be given the opportunity to further supplement or tailor their contributions to the questionnaire.

59. The Chair confirmed that the questionnaire would be re-opened for NGOs too.

60. The Delegation of the Russian Federation, thanking the Secretariat for the documents, highlighted their usefulness for exchanging information and experiences between the offices of various countries on the issue at stake. While expressing support for the Chair's proposal and concurring with the views of the Delegations of the United States of America, the Republic of Moldova and Israel on an information session at the next session of the SCT, the Delegation welcomed with satisfaction the opportunity to update its previously submitted replies to the questionnaire, for the next SCT session.

61. The Delegation of Japan stated that it supported the Chair's proposal.

62. The Representative of IPO, recalling that IPO was a trade association for private owners of all forms of intellectual property, including GUI designers worldwide, indicated that IPO welcomed the organization of an information session at SCT/38 and would be honored, if invited, to provide comments on various GUI design right practices. Highlighting IPO members' experience in various intricacies of design prosecution rights before intellectual property offices worldwide, the Representative was of the view that presenting their practices and empirical understandings would be very helpful to Member States.

63. After discussions, the Chair requested the Secretariat to:

- invite Member States to submit additional and/or revised replies to the *Questionnaire on GUI, Icon and Typeface/Type Font Designs*, as well as relevant examples;
- invite accredited NGOs to submit additional comments and observations on the topic, from the perspective of their experience;
- compile all replies, examples, comments and observations received in a revised document of SCT/36/2 Rev., for consideration of the SCT at its next session;
- prepare a revised document SCT/37/2, taking into account the additional comments, observations and examples received, for consideration of the SCT at its next session; and
- organize an information session, which will take place at SCT/38, addressing (i) the practices of offices and (ii) the experience of users, with regard to GUI, icon and typeface/type font designs.

Update by Member States on Digital Access Service (DAS) for Priority Documents

64. The Chair, recalling that a presentation on the DAS for priority documents had been made by the Secretariat at the previous session of the SCT, indicated that, so far, the DAS was used only for patent priority documents, although WIPO would be ready to use it for industrial designs and trademark priority documents.

65. The Delegation of the United States of America, observing that the DAS continued to be an underutilized tool in the area of industrial designs, considered that such underutilization forewent potential benefits to users and applicants across the globe, particularly SMEs, for whom the cost and burden of providing certified copies of priority documents could be burdensome. The Delegation reported that its national intellectual property Office was already using the DAS for utility patent applications and was actively working towards its full implementation in the context of designs, so as to be soon able to provide United States design

priority documents to other Member States and organizations through the DAS, on behalf of applicants. That work was among the Office's most important priorities regarding design development and implementation. Thanking the Delegations of China and the Republic of Korea for supporting the use of the DAS for industrial design applications, the Delegation declared that it was aware that several other Member States offices were actively working on the implementation of the DAS, either in the framework of the Hague Agreement Concerning the International Registration of Industrial Designs or independently. Referring to the Hague Agreement, the Delegation recalled that the Administrative Instructions for the Application of the Hague Agreement had been recently updated to enable the use of the DAS to more efficiently accommodate the submission of certified priority documents in relation to applications under the Hague System. Believing that, in a near future, applicants would be able to quickly and in a cost efficient manner distribute certified priority documents across the globe using the DAS, the Delegation expressed its eagerness to further implement the DAS across the globe, as well as its interest in hearing views or plans of other Member States and organizations with respect to the DAS for industrial design priority documents.

66. The Delegation of China, recalling that its intellectual property Office was one of the DAS participating offices, declared that it was in favor of the electronic exchange of certified priority documents for design applications. In its view, extending the DAS to industrial design applications would reduce applicant burdens and increase work efficiency.

67. The Delegation of the Republic of Korea, stating that it strongly supported the introduction of the DAS in the design field, believed that prompt discussion would be essential. KIPO had adopted legal amendments to implement the DAS and was currently amending its administrative regulations and examination system. The Delegation announced that a demo, in collaboration with the United States of America, was scheduled from May to August 2017, with the aim of starting the use of the DAS in September 2017.

68. The Chair noted the statements of certain delegations, which indicated that they were taking steps towards the implementation of the DAS for industrial designs in the short term.

69. While encouraging also other Member States to consider using the DAS for the exchange of priority documents for industrial designs and trademarks, the Chair concluded that the SCT would continue to take stock of the progress made in this regard at its future sessions.

AGENDA ITEM 7: TRADEMARKS

70. Discussions were based on documents SCT/32/2, SCT/37/3 and SCT/37/6.

71. The Delegation of Iceland indicated that, in recent years, the national government had seen the need to allocate considerable time and resources to protect its country name against trademark registrations around the world. Different practices in relation to trademark registration added to the complication of an already sizeable task. The most well-known of these cases was one that had been termed by the media as "Iceland versus Iceland" and revolved around the registration of the word mark "Iceland" by a supermarket chain Iceland Foods Limited in the European Union (EU) and in the United Kingdom (UK). In 2014, Iceland Foods Ltd. had obtained a registration for the word mark in the UK for 21 classes, but various goods and services, such as fish, meat, water and cosmetics were deleted following an opposition. The word mark "Iceland" was also registered in the European Union Intellectual Property Office (EUIPO) in 2014 as an EU trademark in eight classes of goods and services, including classes 29 to 32 and 35. These classes cover almost all agricultural products including meat, poultry and game, milk and milk products, fresh fruits and vegetables, seeds, animal feeds, beer and water. Iceland Foods Ltd., had actively enforced its exclusive rights to

the word mark Iceland and opposed the registration of a number of trademarks containing the word "Iceland" by Icelandic businesses. It also opposed the registration of "Inspired by Iceland" which is a national branding scheme partly sponsored and endorsed by the Government of Iceland. The Ministry of Foreign Affairs of Iceland, Business Iceland and Promote Iceland had filed an invalidity claim against the EU word mark registration "Iceland" with the EUIPO on the grounds that the word mark was descriptive and lacked distinctiveness. The process was ongoing. In the meantime, the situation continued to be difficult and somewhat perverse: Iceland Foods Ltd., a single private party legally monopolized the name of the country in trade for a large number of goods and services in the country's most important market. But as a European Economic Area (EEA) member State, Iceland was also a full participant in the EU/EEA single market. Allowing the registration of country names as word marks might also lead to consumer confusion as to the geographical origin of the goods in question and misinform the customer as to the quality or characteristics of goods that actually derived from the real geographic origin, as the examples provided in document SCT/37/6 demonstrated. As was the case in many countries, Icelandic law provided indirect protection for country names, which meant that, as word marks, they would in general be considered either descriptive or deceptive. Thus, in theory, if this was the legal basis, country names were protected against registration as word marks. However, as the case of Iceland versus Iceland demonstrated, in practice, country names were not offered sufficient protection against such registration. The safeguards that existed in the current system did not seem to be applied in a consistent and predictable manner. In the view of the Delegation, this was a problem that needed to be addressed. The Delegation clarified, however, that the intention was not to prevent all trademark registrations that included country names. It was a matter of principle that the public at large, including businesses should be able to access and use the name of their country as a source of identity and branding. It was fairly common for Icelandic businesses to use the name of their country in commercial activities. Nevertheless, the Government of Iceland wanted to prevent the monopolization and misuse of country names and the problem that it faced was that, as soon as a country name was registered as a word mark, it became monopolized in a certain market and with regard to the relevant goods and services. Another problem was that invalidation procedures took time, often a lot of time, during which, at least in some cases, in an increasingly fast-paced market, the owner of the registration could gain added notoriety, which further reduces the legal avenues available. The Delegation opined that the SCT was an important forum for Member States to discuss policy and legal issues relating to the international development of trademark law and standards. The Government of Iceland had brought this issue to the attention of the SCT because monopolization of country names through registration as word marks could have significant effects on national interests in addition to the quite evident impact on business and commercial interests. For this reason, it was felt important to raise awareness of the situation and hoped that constructive work could be undertaken towards ensuring proper, predictable and consistent protection for country names against registration as word marks. The Delegation noted the ongoing work on the areas of convergence and hoped to receive guidance from the Committee to safeguard country names from monopolization through their registration as word marks. The Delegation believed that the approach proposed by the Delegation of Jamaica in document SCT/32/2 provided a good basis for continuing the work of the Committee.

72. The Delegation of China, referred to possible Area of Convergence No. 6 in document SCT/37/3, which stated that, where the name of the country is likely to deceive the public, for instance as to the nature, quality or geographical origin of the products concerned, interested parties could request the seizure of the goods bearing such false indications as to their source. The Delegation was of the view that the proposed drafting of this area of convergence may have gone beyond the scope of Article 10 of the Paris Convention.

73. The Delegation of Jamaica recalled that since 2009, it had advocated for more a consistent, adequate and effective protection for the names of States, as they were of equal importance as the flags or armorial bearings, already protected under the Paris Convention. The Delegation affirmed that its view and the view of several other members of the SCT was

that, although protection was available in theory for country names, such protection was often limited, leaving ample opportunity for persons and entities to nevertheless abuse or unfairly free-ride on the goodwill and reputation of a country name. Therefore, the protection theoretically existing for country names was not comprehensive and was insufficient in practice. Indeed, trademarks containing the name of a state would be granted registration in the vast majority of Member States if they were not considered descriptive of the goods for which registration was sought. Similarly, trademarks containing the name of a state would be accepted in the vast majority of states if the mark did not consist exclusively of a country name and included additional words or other elements. Indeed, in a majority of Member States, applicants who wished to register trademarks comprising or containing country names could stylize that name or add other words or elements to it, as it had been highlighted during the side event organized in the margins of the thirty-third session of the SCT. Furthermore, it was possible for private citizens to obtain word mark registrations of country names, as shown by the Delegation of Iceland in document SCT/37/6. This case clearly demonstrated the threat existing on the sovereignty of states and the persistent problem of lack of protection for country names, which was inadequate and ineffective. At the international level, the possible registration of new top level domain names which comprised country names, adjectives or country codes also constituted a threat. The Delegation thanked the Member States which responded to the request by the Chair to submit comments on several areas of convergence outlined in document SCT/35/4, and thanked the Secretariat for the preparation of document SCT/37/3. The document was useful and highlighted that while there were broad areas of convergence, there still remained many areas of divergence between Member State practices in relation to the treatment of trademarks that contained country names. The Delegation agreed with possible Area of Convergence No. 1 and noted that most Member States that submitted comments on that area of convergence also approved the forms of country names proposed. It also took note of the concerns raised by a few Member States that several variations of country names may not be known to trademark examiners and/or to the general public, and commended the suggestion made by the Delegation of Poland to use the ISO 3166 standard. The Delegation agreed with the proposal made by the Delegation of OAPI to require that applicants submit translations and transliterations where the trademark was not in the language used by the intellectual property office. That was the current practice of the Jamaica Intellectual Property Office (JIPO). The Delegation also expressed appreciation for the suggestion made by the Delegation of Singapore that WIPO establish a centralized database of names of States, in all relevant forms, for reference by intellectual property offices in the course of examination of trademark applications. The Delegation suggested that Member States officially communicate to WIPO their country name and its various forms to be included in such a database, similar to the database containing State emblems and armorial bearings under the Paris Convention. The Delegation agreed with possible Area of Convergence No. 2 and concurred with the submissions by the Delegations of Germany, Iceland, Peru, Philippines and Poland. The Delegation of Jamaica stated that the use of a country name in a composite trademark could, however, be accepted where the registration was applied for by the country concerned or an entity authorized by the country, as part of a nation branding scheme. The Delegation approved the objective test interpretation carried out by the Federal Court of Appeals of Canada that trademarks referring to a geographical location should be assessed against the origin of the goods and services. It did not subscribe, however, to the opinion that a trademark containing a country name was considered descriptive only when the country was recognized as a place of production of the goods and services, and believed that any use of a country name in a trademark might be considered descriptive of the goods and services. If the mark was not descriptive, it would then be considered misleading, unless the registration was applied for by the country concerned or an entity authorized by the country as part of a nation branding scheme. The Delegation agreed with possible Area of Convergence No. 5 and observed that there seemed to be a general consensus in that regard. It noted the extensive and creative use of disclaimers and endorsements in South Africa and explained that Jamaica used a similar disclaimer and limitation system to ensure that uses of country names were neither misleading nor deceptive. The Delegation expressed concern regarding European Directive No. 2015/2346

which excluded oppositions based on absolute grounds. In its view, Switzerland seemed to be the most protective of country names under that possible area of convergence. The Delegation agreed with possible Area of Convergence No. 6 and noted that the appropriate legal means to prevent the use of country names when such use was likely to deceive the public were available in Jamaica, where anyone could oppose a trademark registration or file an invalidation request before JIPO or the Supreme Court. In addition, the Supreme Court could pronounce injunctions and complaints to the Consumer Affairs Commission; criminal enforcement under the Merchandise Marks Act and Unfair Competition Act were also available. The Delegation agreed with possible Areas of Convergence Nos. 3 and 4, and noted that Member States that submitted comments were also in favor of their wording. The Delegation emphasized that the aim of the proposed draft Joint Recommendation (document SCT/32/2) was not to prescribe rules that intellectual property offices should follow nor to create additional obligations, but to establish a coherent and consistent framework to guide offices and other competent authorities in the use of trademarks which consisted of or contained country names. The Delegation expressed its readiness to work with all Member States to find solutions that would lead to the effective protection of country names as well as enjoy the consensus of the entire membership.

74. The Delegation of Switzerland said that the Information Session on geographical indications had been successful and highlighted the absence of protection for country names in the DNS. It was thus necessary to continue discussions on that subject as a matter of priority. The Delegation considered that document SCT/37/3 summarizing observations and comments on possible areas of convergence constituted a precious tool. The Delegation noted with satisfaction that the majority of members agreed on the areas of convergence to be considered and believed that this was a good sign for ongoing discussions. The Delegation supported the proposal made by the Delegation of Singapore to create a centralized database on the WIPO website containing country names, whether they were the official, formal or usual name, as well as the translation, transliteration, short name and adjectival forms. The implementation of that proposal would materialize possible Area of Convergence No. 1 and provide examiners with a useful tool to facilitate their work. The Delegation suggested working on the basis of preexisting instruments such as the terminology database of the United Nations (UN Term) and the ISO standard defining country codes. It, however, disagreed with the view that country names should be limited to names that are known by local consumers. Such a notion seemed delicate as it led to an unequal treatment in the recognition of country names. The Delegation considered that every country name should be recognized as being worth of protection, irrespective of the awareness of local consumers. The Delegation believed that the scope of application of possible Area of Convergence No. 2 should not be limited to country names with a distinctive character, as a sign consisting exclusively of a country name should not be registered or used as a mark. Accepting that such a sign acquired a distinctive character in a country would grant a monopoly of use on the name and prevent businesses from the country concerned to indicate the source of their products. The Delegation said that Member States should determine the conditions of use of their own names. For future work, the Delegation suggested that the SCT address possible Areas of Convergence Nos. 3 and 4. It proposed that the Secretariat draw-up a technical document compiling the comments on which the members agreed. The Delegation also welcomed with interest the note submitted by the Delegation of Iceland and observed that the case demonstrated concretely that the protection of country names was insufficient and that this gap might have undesirable consequences. It was unacceptable that the name of a State could be the subject of exclusive rights attributed to a third party without the consent of the State concerned. The Delegation supported the views of the Delegation of Iceland that the protection of country names needed to be strengthened. The Delegation also supported the revised proposal by the Delegation of Jamaica, a point of reference for discussions on the protection of country names.

75. The Delegation of Georgia, speaking on behalf of the Group of Central European and Baltic States (CEBS Group), commended document SCT/37/3 compiling the different practices and possible areas of convergence concerning the protection of country names against

registration and use as trademarks. The Group expressed appreciation for the information provided in the document, which could be used to further advance the discussions. It took note of the possible areas of convergence identified in the document and looked forward to constructive discussions with a view to finding convergence among laws and practices of different Member States on the protection of country names. The CEBS Group remained open for discussions on possible Areas of Convergence Nos. 1, 2, 5 and 6, but considered possible Areas of Convergence Nos. 3 and 4 to be of a substantive nature. The Group nevertheless looked forward to further discussions on the issue. The Group thanked the Delegation of Iceland for presenting the Note contained in document SCT/37/6. The document demonstrated the complexity of attaining a balanced protection of country names and trademarks, and demonstrated the need to further analyze conflicts that might arise between them. The CEBS Group believed that dialogue between Member States should continue on the issue. An overview of the existing laws, the practice of Member States and a continued dialogue might open the way for best practices on country names and trademark protection.

76. The Delegation of China commented on the proposal made by the Delegation of Jamaica of a draft Joint Recommendation. Concerning Article 1 on the definition of country names, the Delegation stressed the need to conduct further studies on whether the same level of protection should be given to different forms of country names, including full names, simplified names, acronyms in Chinese or other languages, as well as international country codes and adjectives. Regarding Article 3 of the proposal, the Delegation indicated that the Trademark Law of China contained, in its Article 10, a prohibition to register as trademarks signs that were deceptive or misleading as to the quality and origin of the products. Trademark examination practice in China indicated that a trademark containing a country name should be refused registration when the applicant did not come from the country named, since this could mislead the public as to the origin of the goods. With regard to Article 7(1)(i) of the draft Joint Recommendation, the Delegation considered that the criteria for examination of trademarks containing country names focused on whether the name of the country from where the applicant originated actually reflected any true characteristics of the goods and services. The Law of China required not only the indication of the genuine country name but also the presentation of other distinctive features of the goods. In that sense, national law provided a more stringent requirement. Regarding Article 7(1)(ii) of the proposed Joint Recommendation, requiring the potential user of a country name as a mark to obtain authorization from the “competent authorities”, the Delegation noted that this was different in accordance with the Trademark Law of China which required the consent by the Government. In addition, according to the national trademark examination practice, when a registration covering similar or identical goods and services had been granted abroad, the consent of the foreign government was presumed as obtained. Concerning Article 7(1)(v) of the draft Joint Recommendation, the Delegation indicated that in China, the decision on whether or not to accept a trademark containing a country name did not take into consideration visibility, reputation or well-known character of the mark.

77. The Delegation of the European Union, speaking on behalf of the European Union and its member states, recalled that during the thirty-sixth session of the SCT, the Chair had concluded that this item would remain on the agenda of the SCT and requested the Secretariat to invite members to submit in priority comments and observations in relation to possible Areas of Convergence Nos. 1, 2, 5 and 6. At the thirty-sixth session, the Delegation had stated clearly its preference that the Committee focus only on those possible areas of convergence, as it would be difficult to reach any convergence in relation to areas Nos. 3 and 4. The Delegation requested that the comments submitted in relation to possible Areas Nos. 3 and 4 be dealt with in an annex to document SCT/37/3. The Delegation noticed that the submissions from members explained to a certain extent how the system worked. According to the large majority of contributions, protection was provided against descriptive use of country names. However, since document SCT/37/3 contained a relatively low number of comments, the document was not able to demonstrate whether there was a relevant degree of discrepancy which would make convergence desirable. The comments were not appropriate or sufficient either to show the

need for a norm-setting instrument. The European Union and its member states still believed that the protection currently provided by the European Union trademark laws was sufficient to appropriately deal with the matter. The Delegation also recalled the low number of cases relating to country names. The most appropriate and efficient way forward would be to highlight awareness raising activities on the available mechanisms for the refusal or invalidation of trademarks containing country names, as well as addressing the protection of country names in trademark examination manuals, in order to raise awareness of the already widely existing possibilities to refuse or invalidate the registration as a trademark of signs consisting of or containing a country name. Thus, if the Committee were to consider further work on the basis of document SCT/37/3, the Delegation believed that the work should mainly focus on and promote best practices. In that regard, it suggested that the comments contained in document SCT/37/3 be clarified in order to promote dialogue, for instance in relation to the criteria to be applied for assessing the geographical significance of a country name. In addition, the deadline to submit comments should be extended to facilitate a wider and more complete overview of the law in force in the widest possible number of WIPO members. The European Union and its member states considered that the legal framework in place in the European Union was robust enough to deal with cases such as the one presented by the Delegation of Iceland in document SCT/37/6, and it was confident that this case was in the good hands of the EUIPO. The Delegation noted that the opposition against the “inspired by Iceland” trademark had been rejected, although the decision was thereafter appealed. The Delegation highlighted that appeal possibilities were available before the Court of Justice of the European Union and emphasized that the European Union and its member states appreciated the opportunity to shed light on conflicts between country names and trademarks that concretely affected the private business. However one could not prejudge the outcome of the proceedings.

78. The Delegation of the United Kingdom had read with interest the Note prepared by the Delegation of Iceland contained in document SCT/37/6, and expressed regrets for the difficulties that Icelandic companies had been facing with the branding of their products. It said that the dispute with Iceland Foods Ltd. concerned a European trademark covering all European Union member states. An action for invalidity had been filed with the EUIPO, which will decide the matter, and its decision could be subject to appeal by either party involved. As there was outstanding legal action, the Delegation believed it was inappropriate to comment on that specific case. The Delegation considered that existing legal provisions in the United Kingdom and the European Union were sufficiently robust for the purposes of protecting country names. They prevented names of countries, cities, towns and localities from being registered as trademarks where the consumer was likely to make an association between the place name and the product in question. The United Kingdom Trademark Law also contained provisions limiting the effect of a registered trademark by protecting third party rights to use signs denoting the geographic origin of products. However, the Law did not prevent country names from being protected as trademarks *per se*. In certain circumstances, geographic names, including country names were able to effectively function as trademarks because the consumer did not establish a connection between the product or the service and the place name. Whilst the United Kingdom recognized that Nation Branding and more specifically the protection of country names were issues that deserved further consideration in the SCT, the Delegation did not believe that the creation of a new norm setting instrument was desirable or feasible. Any such instrument might obstruct business by preventing country names from functioning as trademarks when they were entirely capable of doing so. It would also generate concerns around the validity of existing internationally registered trademarks which consisted of country names without causing conflict in the marketplace. Furthermore, from a practical perspective, it would be difficult to define the extent of protection and the Delegation considered there was a risk that this type of measure would unfairly prevent a number of suitable signs from ever being registered as trademarks. The United Kingdom remained committed to engaging constructively on the issue and to understanding in more detail the concerns of the Government of Iceland. The Delegation

believed that the work of the Committee should first be limited to better understanding the different systems of protection across WIPO Member States before any legal or norm setting changes were made.

79. The Delegation of Indonesia, speaking on behalf of the Asia and Pacific Group, hoped to see progress towards consensus in an acceptable work program on the issue of the protection of country names. It conveyed the appreciation of the Group to the Secretariat for preparing document SCT/37/3 and thanked all Member States that shared their comments and observations on the possible areas of convergence identified in the document. The Asia and Pacific Group believed there was a need for international action to prevent the undue registration or use of country names as trademarks, and supported the proposal made by the Delegation of Jamaica for the development and future adoption of a Joint Recommendation. Without prejudging the outcome of the discussions, the Group stressed the importance of a coherent and consistent framework for the protection of country names against registration and use as trademarks. The Delegation had studied the Note submitted by the Delegation of Iceland on the use of country names as word marks, which demonstrated that country names seemed not to be offered sufficient protection in practice. The Group hoped to see progress towards reaching consensus on the protection of country names.

80. The Delegation of the Republic of Korea believed there was an urgent need for preventing the illegitimate registration and inappropriate use of country names as trademarks. In that regard, the Korean Trademark Act and Unfair Competition Prevention Act were in line with the proposal made by the Delegation of Jamaica to refuse country names from trademark registration as false indications. The Delegation supported the proposal made by the Delegation of Singapore to establish a database for country names. In determining whether a country name was registrable or not, a trademark examiner had to carry out internet searches that might not produce all the results on the translation and transliteration of the country name. A database of country names, including the abbreviated form and short version of country names of Member States would be more reliable. Moreover, the extent to which a country name was known to the local customer should also be considered as one of the factors in the process of determining registrability. Under the Trademark Law of Korea, a mark consisting exclusively of a sign that was devoid of distinctive character should not be registered unless it had acquired distinctiveness through use before the application date. Such occurrence was nevertheless almost impossible because country names were considered to be in the public domain. In addition, the use of a country name in a trademark would lead consumers to view the mark as an indication of the source of goods and would be objectionable if the goods were not originating from that location. However, if the country name included in a trademark was not the most prominent element of the mark, the latter could be registered. When a trademark contained a country name together with other elements, the mark would be examined as a whole to determine whether or not it was distinctive as a whole. The Delegation said that the grounds for refusal in examination should be the same as the grounds for opposition and invalidation. Nonetheless, excessive restrictions were not desirable and prior trademark rights needed to be safeguarded. Therefore, the Delegation recommended that protection should not be claimed if the mark was applied for or registered before the consumer became aware of the country name in the Member State concerned. Such a safeguard would add legal certainty and predictability to the draft Joint Recommendation.

81. The Delegation of Brazil stated that the discussion on country names touched upon the fundamental aspect of a trademark, namely its ability to distinguish the goods and/or services of one undertaking from those of another. It was thus in the interest of the Committee to explore ways of reducing uncertainty for consumers, applicants and third parties in that regard. The Industrial Property Law of Brazil did not contain a specific definition of what constituted a country name. Under Article 181, a geographical name that was not registered as a geographical indication could, on the one hand, serve as a characteristic element of a mark. On the other hand, a country name could be registered as a geographical indication if it complied

with the requirements set out in Articles 176 to 182 of the Law. Regarding possible Area of Convergence No. 2, a mark containing the name of a State was carefully assessed against its potential descriptive, misleading or deceptive character as to the origin of the goods or services by the National Institute of Industrial Property. This principle was also recognized by the Brazilian Courts. As an example, a country name might be considered lacking distinctive character if it was used in an adjectival phrase in relation to the product or service it intended to designate. Furthermore, a sign commonly used to designate a characteristic of the product or service in relation to its geographic origin was not registrable, when such origin had a reputation for that good or service. The understanding was that such signs lacked distinctiveness and therefore failed to comply with national legal requirements. The Delegation considered that the grounds for refusal in the course of examination described in possible Areas of Convergence No. 2, 3 and 4 might equally be used as grounds to initiate invalidation and opposition procedures, which could be undertaken via administrative or judicial proceedings. The Delegation expressed interest in continuing the discussions on the protection of country names in order to reach a common understanding of the matter. Discussions should also include the use of country names in the DNS, where difficulties were highlighted in the context of the expansion of the new gTLDs at ICANN.

82. The Delegation of Canada acknowledged the importance of the agenda item for other delegations and felt it was crucial that countries support the ability of judicial authorities to stay current and interpret legislative provisions based on the constantly evolving state of trade. Indeed, Courts were meant to provide guidance on legislative provisions that might remain fixed but for which the context evolved. This had been reflected in the submission by the Delegation of Canada concerning the areas of convergence, which highlighted how the Canadian judicial authorities considered the current nature of trade for geographically descriptive trademarks. The establishment of an objective test had made it more difficult for applicants to overcome objections based on geographic descriptiveness. In addition, judicial decisions ruling on the registrability of a trademark also applied to invalidation and opposition proceedings. That clarification provided further certainty that there was a sufficient level of protection in Canada to prevent bad faith use of country names. In order to find a way forward on the agenda item, the Delegation recommended that the Committee focus its efforts on developing awareness raising tools or best practices that provide direction in examination of geographically descriptive trademarks. The Delegation of Canada expressed readiness to share its experience in the area and encouraged members to consider the current tools available on the website of the CIPO, which explained in detail the practices and contained a guide on trademarks and an examination manual that listed all applicable case law in Canada concerning place of origin.

83. The Delegation of San Marino declared its full support to the position of the Delegation of Iceland and aligned itself with the statement made on the protection of country names.

84. The Delegation of Barbados reiterated its strong commitment to the revised proposal presented by the Delegation of Jamaica on the protection of country names against registration and use of trademarks, given the significant importance of the protection of the Barbados brand. The national brand was integrally linked with leading economic sectors such as tourism, international business and the financial service sector, as well as its well-known rum. Notwithstanding the existence of provisions in the domestic legislation that addressed the protection of country names, given the varied approaches of Member States following the Study prepared by the Secretariat, it remained evident that there was an absence of consistency and uniformity in the treatment of the matter. The Delegation therefore thanked the International Bureau for the work that had been carried out, in particular document SCT/37/3. It looked forward to continuing discussions and further consideration of the possible areas of convergence with a view to achieving greater consensus on the protection of country names.

85. The Delegation of Denmark supported the statement made by the European Union on behalf of its member states and believed that the current legal framework gave adequate protection to country names. That being said, the Delegation fully understood and supported the concerns expressed by the Delegation of Iceland in relation to what it believed to be the abusive use of their country name. The Delegation of Denmark considered that when country names were registered as trademarks such registrations could be misleading and possibly descriptive. Therefore, Denmark would support further consideration of the issue.

86. The Delegation of Italy hoped that its comments would be taken into consideration in any further developments aimed at reaching convergence on the protection of country names. The Delegation supported possible Area of Convergence No. 1 although it explained that the Industrial Property Code of Italy did not contain any specific reference to the concept of country names. In line with comments from other Member States, signs that were considered descriptive of the origin of the goods and services and/or devoid of any distinctive character were refused registration as a mark in Italy. The Delegation agreed with possible Area of Convergence No. 2 and underlined that it was nevertheless possible to register a trademark which was not composed exclusively of a geographical name, or when such a name was perceived by the consumers as a fanciful name in relation to the products or services claimed. For example, the marks "Capri" for cigarettes and "Roma" for perfume had been considered as fantasy names in relation to the goods claimed. With regard to possible Area of Convergence No. 3, the Delegation said that according to national law a trademark would be refused registration if it was considered deceptive, in particular as to the geographical origin, nature or quality of the goods or services. In Italy cases of misleading, deceptive or false trademarks were dealt with at the Courts, since the Patent and Trademark Office was not competent to hear appeal cases. The Delegation aligned itself with the opinion of the Delegation of the European Union that progress would be difficult to achieve concerning Area of Convergence No. 3, which was of a substantive nature. With regard to possible Area of Convergence No. 4, the Delegation specified that trademarks containing other elements in addition to a geographical name could be registered, provided that such elements were perceived by the consumers as fanciful and where there was no likelihood of association of a geographical origin with the goods or services claimed. In line with the view expressed by the Delegation of the European Union, the Delegation believed that any progress might be difficult to achieve concerning such possible area of convergence since it fell outside of the scope of the work of the SCT. Concerning possible Area of Convergence No. 5, the Delegation indicated that there were no records at the Italian Patent and Trademark Office of relevant cases of opposition or conciliation procedures regarding trademarks containing country names. With regard to possible Area of Convergence No. 6, common grounds with possible area of convergence No. 3 were found, as it dealt with the concepts of deceptiveness and false indications with regard to the natural qualities or geographical origin of the goods and services. In Italy, false or misleading indications concerning geographical origin fell under the jurisdiction of the Courts. The Delegation supported the revised proposal made by the Delegation of Jamaica in document SCT/32/2 and was ready to participate in further discussions on the protection of country names.

87. The Delegation of France expressed interest for the protection of country names, in particular with regard to the Information Session on geographical indications, and declared its commitment to continuing constructive discussions. The Delegation requested that the summary of the comments of France in document SCT/37/3 relating to possible Area of Convergence No. 1 be amended. Under national trademark legislation, country names did not constitute a specific category. They constituted a type of geographical term that could be validly filed as a mark like any other denomination, as long as it was distinctive. The French system did not derogate from that principle in the case of country names, as long as the term was neither descriptive nor deceptive. National practice could in fact consider all the alternatives proposed in possible Area of Convergence No.1. However, those different variations were not automatically or systematically protected. The Delegation noted the low number of

contributions and believed that the document should be left open for further comments. The Delegation associated itself with the statement delivered by the Delegation of the European Union proposing that the Committee work on the definition of good practices concerning the protection of country names.

88. The Delegation of Monaco thanked the Delegation of Iceland for the information transmitted to the Committee, which gave a concrete example of the problems that could arise in the context of the protection of country names. It shared the concerns expressed by the Delegation of Iceland as well as by other delegations, which indicated, on the one hand, that the protection measures provided for by the trademark system were neither uniform nor predictable and, on the other hand, that the material and human costs associated with the protection of country names were quite high. Such costs represented a heavy burden on small States without necessarily guaranteeing the preservation of the image and reputation of the country in the interest of local economic operators and consumers. The Delegation believed that it was therefore crucial to strengthen, at the international level and in a harmonized manner, the protection of country names against their registration and use as trademarks. The Delegation reiterated its support for continuing the work of the Committee and considered that the revised proposal made by the Delegation of Jamaica constituted an excellent basis for that work. Document SCT/37/3 also presented interesting information and suggestions to be further discussed.

89. The Delegation of Norway noted that it had studied with interest the submissions from Member States relating to the possible areas of convergence as well as the Note submitted by the Delegation of Iceland and acknowledged the importance that members of the Committee attached to the discussions on the protection of country names. The Delegation said it was essential to maintain a trademark system that was efficient and flexible for the users. In its view, the use of country names in trademarks was unproblematic as long as it did not monopolize country names in an inappropriate manner or misled the public as to the origin of the goods and services. The Delegation believed that the documents prepared by the Secretariat showed that existing legislation in most Member States prevented the registration of descriptive and deceptive trademarks and thus granted adequate protection against monopolization and misuse. Although individual cases might occur and suggest that country names did not enjoy sufficient protection against registration as trademarks, one should be careful in drawing conclusions from such cases to the effect that they might change the general law. The Delegation did not support any norm setting activities at WIPO regarding the protection of country names against registration and use as trademarks. However, it did not oppose fact finding or awareness raising activities to be undertaken by the Committee. A collection of best practices might be useful guidance in the assessment of similar cases. The Delegation underlined that the trademark law relevant to country names would always require a concrete assessment of the particular case and mark in question on the basis of the applicable law.

90. The Delegation of the United States of America declared that it had reviewed all the contributions, including the submission from the Delegation of Iceland with great care and interest. On the latter, it considered inappropriate and premature to make any conclusions about the nature or extent of the problem raised because of the ongoing litigation. From the submissions sent, it was obvious that offices were undertaking a nuanced analysis when evaluating the geographic significance of applied for terms. Almost all contributions mentioned the various elements assessed in determining the meaning of the applied for subject matter before making registrability decisions. The Delegation said that the document on areas of convergence represented a challenge for submitting comments and seemed to have limited utility as a tool for studying the practices of each office. From its perspective, the categories identified in the document did not adequately capture the examination determinations, as in some instances the distinctiveness assessment was separated from descriptiveness, deceptiveness or the misleading character of the mark. The Delegation identified four main

tests used by countries during examination to determine the geographic significance of the matter and that seemed to be present in every submission, although there was different wording used, a different characterization used and even different threshold levels of significance in each submission. The first category of analysis was: is the term geographic? Does it designate a place? Was the primary meaning geographic? Was the only meaning geographic? Those questions were addressed to the relevant consumer. As an initial step, it seemed that every office tried to determine whether a term is geographic or not based on their national law. This was a contextual decision. The second test seemed to be in the link between the place and the goods and services or how they interact. How strong is the link? In some instances, there was a different analysis for goods than for services. In some cases, the type of goods (e.g., natural goods) made a difference as to the analysis. In some submissions, the question was whether the consumers were likely to believe the goods or services came from the place identified. In several submissions the point was whether there was a current association between the place and the goods or whether there was a possibility of future association. Another issue was: do the goods have special properties? The third category of issues (which might collapse with the second) related to the relevance of the place to consumers, whether it was known to the average purchaser, whether the place was not neutral in the context of the goods and whether or not it had a reputation or was recognized as the place of origin of the goods, or whether the place was important to the purchasers or consumers? The last test considered whether the goods and services originated from the place concerned and, in that instance, did the final product come from that place? Or did the ingredients come from that place? Were the services provided in that place or in other places, and perhaps if the goods did not originate from that place, the mark could be considered misleading or deceptive, depending on the analysis made. The Delegation was of the view that document SCT/37/3 actually did not identify any areas of convergence and that the real question was how offices were determining whether a term was geographic and what was the significance of such a determination. The Delegation supported the intervention made by the Delegation of the European Union suggesting that further comments be provided on the possible areas of convergence even though it did not seem clear whether the context was right for determining geographical significance and on that basis certainly looking at best practices. The Delegation noted that every submission seemed to suggest there was no practice in place suggesting that geographic terms were automatically found to be deceptive and then the burden shifted to the applicant to prove that the sign applied for was not deceptive. Therefore, when thinking about normative work, it was difficult to suggest that anyone who would apply for any of the forms of a country name listed in possible Area of Convergence No. 1 would get it automatically refused and that possibility was not represented in any of the submissions received nor corresponded to a current or best practice. With this idea in mind, the Delegation expressed concern about a proposal that had been mentioned earlier in the meeting to establish a database of country names presumably including all the variants contained in possible Area of Convergence No. 1. It seemed problematic to imagine that the listing would be the basis for finding that an application for a trademark that contained a country name conflicted with any term on the database and that it was *per se* deceptive. If that was not the expected result, the Delegation did not see the utility of creating a database of country names, as examiners could find that information online and the database did not address the issue of geographic significance, or in other words, what is the perception of the relevant consumer? The listing contained in a database did not indicate what the consumer perceived but only what a country said their name was. It would therefore cause more confusion than it solved and the Delegation could not support that proposal.

91. The Delegation of Colombia, speaking on behalf of GRULAC, recalled that the Group attached great importance to the protection of country names. It noticed the lack of consistent protection for country names at the international level and reiterated its commitment to continuing discussions on the proposal presented by the Delegation of Jamaica in document SCT32/2.

92. The Delegation of Japan restated that country names were a type of geographical term generally not registrable as a trademark if they proved to be descriptive or deceptive in relation to the designated good or services. However, it considered that the registration of trademarks containing geographical terms should not be excessively restricted as long as the mark was distinctive and not liable to mislead the public. Indeed, it feared that some economic activities might be affected by such an excessive protection of country names, when geographical terms, including names of States, indicated the place of origin of the goods. The Delegation was ready to share its experience on this matter in a future session of the Committee.

93. The Delegation of Australia welcomed the information provided by members who had sent contributions for the preparation of document SCT/37/3. It saw the possible areas of convergence outlined in document SCT/35/4 as a helpful way of identifying common grounds on the protection of country names. In the view of the Delegation, continued work on possible areas of convergence was an appropriate way of addressing the problems experienced in some Member States. Concerning possible Area of Convergence No. 1, the Delegation echoed the comment made by the Delegation of the United States of America and contained in document SCT/37/3, that the definition of country names was too broad to be effective, that many variations of country names might not be known to the local consumer and that several names could have another meaning for the consumers. The Delegation feared that an arbitrary prohibition might result in the loss of legitimate use and held the view that each trademark application needed to be examined contextually. The inclusion of a word or acronym *per se* in a trademark application should not result in automatic refusal, as the corporate identity of the mark needed to be considered. For example AUS (or phonetically OZ) is a name commonly used to describe Australia and “Ozlotto”, a lottery in Australia, included that word. Oz was also a first name and featured in various well-known titles such as “The Wonderful World of Oz” and “The Wizard of Oz” film. The Delegation mentioned that the ISO 316601, country code of Australia was “AU”, also a common French word, which was included in a number of trademarks registered in Australia, such as “*au pair*” or “*au lait*”. Therefore, the Delegation stated that examination should be conducted according to the meaning of the mark as a whole and in the context of whether it has capacity to distinguish and whether it would be likely to deceive or cause confusion. A proper predictable and consistent protection should be achieved by following current approaches to safeguard the legitimate use of trademarks as well as the rights of consumers. The Delegation felt that the title of possible Area of Convergence No. 2, “non-registerable if considered descriptive”, could cause confusion since not all WIPO members contemplated such a ground for refusal and suggested changing the title of the possible area of convergence to read “non-registrable if considered not capable of distinguishing”. Regarding possible Area of Convergence No. 5, the Delegation believed that the same grounds for refusal of registration should apply for opposition and cancellation procedures, where appropriate. In conclusion, the Delegation held that the areas of convergence formed a fitting avenue to address discussion and potentially inform Member States office guidelines, given that they represent practices of WIPO members, so long as others are encouraged to share their experiences at future meetings of the SCT.

94. The Delegation of the Russian Federation appreciated the compilation of Member State contributions on the protection of country names against registration and use as trademarks in a single document. It stated that under national legislation, the descriptive nature of a trademark was a ground for refusal, as well as for opposition. A country name could, however, be included in a trademark as a non-protected element provided that it did not mislead or deceive the consumer or cause confusion. The Delegation believed that a database including country names and their variations would be useful for the purposes of examination. Some official country names might not be known to the average consumer and could be used for identifying the origin of the goods. In that connection, the Delegation agreed with the view expressed by the Delegation of Iceland in document SCT/37/6, namely, that, in the public interest, country

names should remain available and that no one should acquire exclusive rights to country names. The Delegation declared itself prepared to continue working in that direction and contributing to a deeper understanding of the problem.

95. The Delegation of Iceland thanked the Committee for the substantive discussions that took place during the thirty-seventh session and all the comments made by Delegations stressing the importance of the issue, to which it would contribute with continued and constructive engagement.

96. The Delegation of Jamaica thanked SCT members for their fruitful engagement to discussions on the protection of country names. It thanked the Delegation of China for the comments provided on the draft Joint Recommendation and the Delegations of Barbados, Colombia on behalf of GRULAC, Indonesia, on behalf the Asia and Pacific Group, Italy, Monaco, the Republic of Korea for their support for the draft Joint Recommendation. The Delegation agreed with the proposals made by the Delegations of Brazil and Switzerland to deal in priority with country names in the DNS, as well as with the view that States should be invited to submit further comments on the possible areas of convergence, in including areas No. 3 and 4. The Delegation supported the suggestion made by the Delegation of Switzerland to request the Secretariat to prepare a technical document based on the submissions provided by Member States. The Delegation recognized that there seemed to be consensus on the fact that the protection of country names was of importance to the Committee and should remain on the agenda. It looked forward to working with Member States to find a viable solution to the matter.

97. After discussions, the Chair requested the Secretariat to:

- invite Member States to submit further comments and observations, in priority, to Areas of Convergence No. 1, 2, 5 and 6;
- compile all comments and observations received in a revised document SCT/37/3, in which any comments and observations to Areas of Convergence No. 3 and 4 will be moved to an Annex to the document; and
- prepare an analytical document based on revised document SCT/37/3.

International Nonproprietary Names for Pharmaceutical Substances (INNs)

98. The SCT considered document SCT/37/4.

99. Discussions were based on document SCT/37/4 and on a presentation by Dr. Rafaella Balocco Matavelli, Group Lead of the International Nonproprietary Names (INNs) for Pharmaceutical Substances Program of the WHO (hereinafter WHO Representative). The presentation provided a general outline of the INN selection process, the publication of lists of proposed and recommended INNs in different formats, as well as the distribution of such information by electronic means via the Mednet Community and the INN Global Data Hub.

100. The Delegation of Iran (Islamic Republic of) highlighted the importance for trademark offices to have access to the list of recommended INNs so that they could ensure that trademarks similar to INNs were not registered. As referred to in the document prepared by the Secretariat, the SCT had approved, in a previous session, several proposals to improve access by national and regional industrial property offices to the list of INNs. Concerning the proposal contained in document SCT/37/4 to discontinue the email circulars concerning newly available lists of INNs, the Delegation expressed concern that any changes in the current system would affect trademark office access to information on INNs. The Delegation would support any modification of the current procedure to render access more practical, but was not

in favor of discontinuing e-mail circulars. The Delegation held the view that the rationale behind the decision of the Committee to establish the current procedure subsisted and before adopting any new procedure, it was necessary to evaluate the consequences of such a change. The Delegation acknowledged the development by WHO of the collaborative information service called INN Global Data Hub, but noted that national intellectual property offices had not necessarily established the appropriate connectivity to the WHO website.

101. The Delegation of Hungary referred to the suggestion made in the presentation by the WHO Representative for trademark owners to use a combination of the INN and the company name on pharmaceutical products, instead of creating fanciful or brand names. In the view of the Delegation, this suggested strategy would have a positive impact on the examination practice of those national authorities that received the request for authorization to enter the market. The Delegation recalled that, in the case of pharmaceutical products, applicants had to file, in parallel with the application with the Trademark Office, a request for authorization with the national agency responsible for the security of pharmaceutical products. The Trademark Office examined whether the mark was confusingly similar with an earlier mark, whereas the medicines agency checked whether the name applied for was in line with previously adopted or granted authorizations.

102. The Delegation of Colombia, speaking in its national capacity, indicated that following advice received from the National Industrial Property Office, it would be preferable to continue the e-mail circulars announcing the publication of lists of INNs. While the Delegation was ready to consider accessing the newly proposed INN Global Data Hub, it still saw value in keeping the WIPO e-mail alerts, as these would continue facilitating the research efforts of national offices when they examined applications for new pharmaceutical trademarks.

103. The Delegation of China said that the presentation made by the Representative of WHO provided a better understanding of the collaborative work undertaken on INNs by WIPO and WHO. The Delegation noted that it had agreed to discontinue the paper circulars, but hoped that once the national office provided contact details on the SCT Forum, the e-mail alert could be sent in a timely manner.

104. The Delegation of Indonesia, speaking in its national capacity, noticed that the INN Global Data Hub website stated that access was restricted to authorized members only and solely for the use that the Data Hub was intended. The Delegation wished to know who the current members of the Data Hub were as it was not certain that national intellectual property authorities in Indonesia were members. Concerning document SCT/37/4, the Delegation highlighted that paragraph 6 stated that, for cost effectiveness, paper circulars had been replaced by electronic communications and paragraph 8 proposed to also discontinue e-mail circulars. The Delegation wondered it would be cost effective to phase out e-mail circulars.

105. The Delegation of the European Union, speaking on behalf of the European Union and its member states expressed full support for the proposal made by the Secretariat in paragraph 6 of document SCT/37/4. The Delegation was of the view that the current practice of sending paper circulars to trademark offices with the CD-ROM containing the cumulative list of INNs could be replaced by electronic communications and looked forward to hearing more about the practical implications of the proposal contained in paragraph 8 of document SCT/37/4.

106. The Delegation of Senegal, speaking in its national capacity, welcomed the close cooperation between WIPO and WHO. Concerning paragraph 6 of document SCT/37/4, the Delegation inquired whether an evaluation had been made about the impact that a recommendation to discontinue the email circulars would have on trademark offices.

107. The Delegation of Indonesia, speaking in its national capacity, noted the support expressed by several other delegations in favor of keeping the current practice of the International Bureau of WIPO to send e-mail circulars on the publication of new lists of INNs. The Delegation sought clarifications from the Representative of WHO about the type of online services that were provided through the WHO/INN website, which had been described as ranging from individual web consultations to machine-to-machine communication. In order to have a better idea of the level of service offered, the Delegation asked whether in the case of online consultation, the national Office needed to be registered with WHO and how a request for information from an external source was being handled. Regarding the machine-to-machine service, the Delegation had looked at the work advanced with the EUIPO and wondered if that level of service implied resolving in anticipation a number of technical issues. In such a case, the Delegation wondered whether WIPO could assist on the technical side. It seemed that the question raised by the Delegation of Hungary was quite interesting, although it might take the SCT discussion beyond their context. However, the Delegation of Indonesia was interested on any comments from the WHO Representative.

108. In reply to concerns expressed by several delegations, the Secretariat explained that the proposal to phase-out the current e-mail alerts through the SCT Electronic Forum each time that WHO communicated the publication of lists of proposed and recommended INNs had been made on the basis that a direct access to that information was made possible through the tools put in place by the WHO/INN management. In particular, it had to be considered that the e-mail circulars did not carry, in attachment, the list of proposed or recommended INNs but only a link to the WHO website where those lists were found. Additionally, there was an issue of timing, as the publication of the list of proposed INNs normally indicated a four-month time limit within which it was possible to file objections to proposed names. The information could be timely only if WIPO received the initial communication also in a timely manner. Another issue concerned the coverage of the SCT Electronic Forum, since it was not certain that all the WIPO intellectual property offices had subscribed to the forum. Against that background, it had been considered, six years after the last decision of the SCT, which phased-out the paper circulars announcing the publication of new lists, that the SCT could now decide phasing-out the e-mail alerts in exchange for a system of direct access to the relevant information on INNs published on the WHO/INN dedicated website. The International Bureau of WIPO was nevertheless ready to implement all SCT decisions, including the continuation of the e-mail circulars if that was considered necessary.

109. In reply to the questions raised by several delegations, the WHO Representative said that the INN Program did send paper circular letters when it forwarded the CD-ROM containing the cumulative list of INNs, but the recipients of the circular were the Ministries of Health and, for that reason, it was important to collaborate with WIPO, so that the Trademark Offices also received this information. Regarding the functioning of the Mednet community that had been referred to in the WHO presentation, the Representative clarified that an e-mail alert was sent to the members of Mednet each time that a new INN list was published or when there were any other relevant developments. The Mednet e-mail alert did not include the list of INNs, as all lists of INNs were published on the WHO website. Membership of the Mednet community was only possible through registration and it was not foreseen to change this modality. Referring to the INN Global Data Hub, the Representative explained that such an information resource was open to all stakeholders in WHO Member States and not only the Ministries of Health. With this machine-to-machine system, the INN data formed part of the user's database, allowing searches to be made by INN name and –subject to further confirmation– also by INN list. Upon receipt of a request from a user in a WHO Member State to access the INN Global Data Hub, the INN/IT Expert would get in touch with the IT officer at the receiving end and indicate the steps that needed to be taken in order to create a search possibility on the user's web server and then connect to the WHO server. With a view to providing a minimum security for this integration, passwords needed to be exchanged. In reply to the issue raised by the Delegation of Hungary, the WHO Representative said that the recommendation to use the

company name together the INN instead of creating new brands for pharmaceutical products was contained in WHO Assembly Resolution No. 46.19, which was already 25 years old. The recommendation was not made to counter trademarks but to promote the use of multi-source generic medicines and, therefore, facilitate broader access to them.

110. The Delegation of Indonesia, speaking in its national capacity, noted that although access to the INN Global Data Hub was free of charge, it seemed that setting-up a server to connect to the WHO server could be a costly operation for receiving members. In the view of the Delegation, development of the INN Global Data Hub did not justify discontinuing the e-mail circulars through the SCT Electronic Forum.

111. The Delegation of Pakistan understood that the discussion related to the protection of WHO data and for this reason it was important to register before accessing the data. The Delegation wondered what the different avenues were for any individual to look up the generic name of a particular pharmaceutical product. The Delegation held the view that perhaps WIPO could set up a publicly accessible webpage where such information would be found.

112. In reply to the comment made by the Delegation of Indonesia, the WHO Representative explained that Mednet and the INN Global Data Hub were two separate and parallel systems. With the former, the user conducted a search by accessing the WHO extra net. With the INN Global Data Hub, the user did not have to go out of her/his database and enter the WHO database but while she/he was screening (for example) a trademark, she/he could screen the INN data. The data would be physically stored at WHO but would nevertheless appear in the user's database and that was the advantage of the INN Data Hub. However, for this system to work, it was necessary that the user opened her/his database for WHO to transfer the INN data like a radio machine. The WHO Representative noted that there was a mutual interest in the collaboration between the WHO/INN management and trademark offices, to the effect that trademarks conflicting with INNs were not granted and INNs similar to trademarks were not adopted. That was the very reason why the four-month time limit had been established. Indeed, following the publication of a list of proposed INNs, anyone around the world who had, for example, a similar trademark, could object to their adoption.

113. The SCT took note of the presentation made by the Representatives of the WHO regarding the Internet-based mechanisms made available by WHO to parties with appropriate credentials to access INN data directly online.

114. After discussions, the Chair requested the Secretariat:

- to liaise with the WHO to explore whether, and how, national and regional industrial property offices of WIPO Member States could make use of the above-mentioned mechanisms, and to report back to the SCT on this matter at SCT/39; and
- in the meantime, to continue its existing practice of informing offices of lists of proposed and recommended INNs.

Update on Trademark-Related Aspects of the Domain Name System (DNS)

115. Discussions were based on document SCT/37/5.

116. The Delegation of Switzerland thanked the Secretariat for the update contained in the document and expressed support for continued monitoring and updates by the Secretariat concerning the DNS.

117. The Delegation of Indonesia thanked the Secretariat for the update and requested further information on the extent of use of the Uniform Domain Name Dispute Resolution Policy (UDRP) by parties from developing countries.

118. On behalf of the CEBS Group, the Delegation of Georgia thanked the Secretariat for maintaining this item on the agenda and for the continued update on the trademark-related aspects of the DNS. Given the challenges posed by the global nature of the Internet, the Delegation expressed gratitude for the mechanisms developed through the WIPO Internet Domain Name Processes. Highlighting the success of the UDRP and the increase in complaint filings with WIPO, the Delegation expressed support for WIPO's continued monitoring and administration of efficient dispute resolution mechanisms to address abusive domain name registrations. The Delegation also expressed support for the Secretariat's policy work and for keeping Member States informed of future developments. The CEBS Group expressed interest in the possible extension of UDRP to country names and geographical indications.

119. The Representative of ICANN also thanked the Secretariat for the update reflected in the document and referred to discussions at ICANN's Governmental Advisory Committee. The Representative indicated that the policy development process reviewing rights protection mechanisms is ongoing and that the UDRP may be reviewed by ICANN towards the end of 2017. The Representative also noted discussions regarding the requested protection of intergovernmental organisation identifiers as well as discussions on a new application process for the launch of further new Top-Level Domains.

120. In reply to the Delegation of Indonesia, the Secretariat explained that the statistics concerning WIPO UDRP filings are provided in real-time on WIPO's website, including geographical distribution of all parties.

121. The Chair thanked the Secretariat for the update and highlighted the importance of continued monitoring of DNS developments particularly noting the future allocation of domain names.

AGENDA ITEM 8: GEOGRAPHICAL INDICATIONS

122. Discussions were based on documents SCT/30/7, SCT/31/7, SCT/31/8 Rev.6 and SCT/34/6.

123. The Delegation of France, referring to the Information Session on Geographical Indications, expressed its appreciation for the presentations, which had shed light on the expectations with regard to the procedures of protection of geographical indications and also on the challenges to be addressed given the development of the Internet. The Delegation believed that the Session had been rich in lessons and would assist the SCT in the implementation of the General Assembly mandate, which had directed the Committee to examine the different systems for the protection of geographical indications, within its current mandate and covering all aspects. Wishing to share with the SCT the lessons drawn by the Delegation of France from that Information Session, the Delegation first noted the pragmatic approach of stakeholders in using in the best possible way the systems available to them to protect geographical indications, even if those undertakings were difficult in some countries, also with regard to costs. The Delegation also noted that there were inconsistencies in the modes of protection of geographical indications and that different requirements were applicable in various countries. The Delegation also indicated that during the Information Session it had discovered new tools for protection as, for example, the "standard of identity", norms for identification of products in the legislation of the United States of America. The Delegation expressed the regret that, due to time constraints for the presentations, it had not been possible to understand all the mechanisms presented and, especially, the difficulties that recognized products in one system

could encounter while seeking protection in other countries. The Delegation also regretted that there had not been more detailed presentations on the certification mark system, for which there was no commonly accepted definition in international treaties, each country having its own views on the implementation of certification marks, contrary to collective marks, which had been defined and for which some principles had been provided in the Paris Convention. Therefore, the Delegation believed that it was important to have clarifications on that issue. Referring to a presentation which had shown that different protection systems could apply in one country, the Delegation indicated that it would be useful to understand the scope and the limits of the protection provided by each system, in order to ensure that stakeholders could choose between one or another, being fully aware of the situation and of the scope of protection provided by each one. Given those learnings, the Delegation reiterated its support for the proposal to conduct a study on the national and regional systems for protection, which would allow a better understanding of the protection through certification marks. That study could also cover other systems mentioned in the Information Session, as for example, the “standard of identity” or *sui generis* systems. Concerning the protection of geographical indications on the Internet, the Delegation noted from the Information Session that both States and representatives from businesses had a great interest in that respect. The Delegation believed that conducting a study was appropriate since the matter needed to be treated urgently in order to have a better visibility of the protection of geographical indications in that area, taking into consideration the new extensions and the possible future work of ICANN. Finally, in addition to the concerns shared with the co-signatories of document SCT/31/8 Rev.6, the Delegation said that it was important to find solutions regarding the different treatment of trademarks and geographical indications in the dispute resolution mechanisms currently available. The Delegation concluded by reiterating its support for the study of national systems for the protection of geographical indications, including their protection in the DNS and on the Internet, as proposed in document SCT/31/8 Rev.6.

124. The Delegation of Colombia, on behalf of GRULAC, expressed the view that the SCT had been fulfilling the General Assembly mandate, which had directed the SCT to examine different systems for the protection of geographical indications within its current mandate and covering all aspects. Expressing its gratitude to the Secretariat for the successful Information Session on Geographical Indications, the Delegation pointed out that the quality of the presentations and the variety of visions and experiences presented had allowed the SCT to better understand the different national and regional geographical indication protection systems, as well as their relationship with domain names on the Internet. The various models of protection presented, as well as the experiences shared by geographical indication beneficiaries, had enabled the Committee to appreciate the opportunities and benefits that geographical indications conferred upon their right holders. That was particularly relevant for developing countries, where geographical indications could be used as tools to bolster the partnership between small and medium-sized producers, who would benefit from the attributes associated with geographical indications. With the aim of safeguarding the interests of those producers, GRULAC believed that it was relevant to work on the basis that, independently of the system of protection, geographical indications should be effectively protected by all countries, in line with the rules of the WTO’s TRIPS Agreement. Indicating that GRULAC would continue to closely follow the discussion on the proposal in the agenda item under consideration, the Delegation hoped that the SCT would be able to formulate a work plan, which would continue to support the General Assembly mandate.

125. The Delegation of Hungary, referring to the joint proposal by the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Poland, Portugal, the Republic of Moldova, Spain, and Switzerland, recalled that the proposal had been introduced in detail during the previous sessions of the SCT. Reiterating the position that the joint proposal was based on current and real needs of geographical indication users, the Delegation observed that the proposal covered a great amount of practical issues. Expressing its gratitude to the Secretariat for the organization of the Information Session on Geographical Indications, the Delegation

believed that the Session had been extremely useful and had given the possibility to the Committee to reflect on different points of view. The information provided in the presentations had strengthened the understanding of those issues and had contributed to reinforce the position highlighted in the joint proposal. The Delegation also noted that the proposal was co-sponsored by a significant number of delegations and its discussion within the SCT had generated positive reaction and broad support from Member States from different regional groups. Reiterating the proposal to conduct a study on the protection of geographical indications and country names in the DNS, the Delegation expressed the view that the interests of geographical indication holders could not be simply disregarded because of a lack of a universally accepted definition of geographical indication. With regard to the protection of country names, the Delegation had difficulties in understanding why an intergovernmental organization had more rights in protecting the name of its organization or its acronym than an individual country. Bearing in mind those issues, the Delegation urged the SCT to support the joint proposal and agree on a working method and principles.

126. The Delegation of Indonesia, on behalf of the Asia and Pacific Group, expressed its gratitude to the Secretariat for the Information Session on Geographical Indications, indicating that the Session had been very beneficial and useful for further enhancing common understanding within its regional group and all Member States of WIPO. Stressing the importance of information sharing, the Delegation said that it had been pleased to hear from a diverse range of speakers from different backgrounds on the features, experiences and practices of different national and regional geographical indication protection systems and on the protection of geographical indications and country names in the DNS and on the Internet. Taking note of all the proposals on geographical indications, the Delegation reiterated its strong interest to see progress in the discussion, and urged all the delegations to agree on a work plan on the agenda item under consideration.

127. The Delegation of Georgia, on behalf of the CEBS Group, expressed its appreciation for the organization of the Information Session on Geographical Indications and for bringing experienced speakers to share their knowledge in the field of geographical indications. The Delegation considered that the Session had been helpful in finding solutions to advance the work of the Committee. The Delegation also believed that the Information Session had brought the necessary evidence to move forward in the discussion of the work program, as mandated by the WIPO General Assembly. Stressing the need to continue the discussion of the joint proposal, co-sponsored by several countries from the CEBS Group, the Delegation expressed the view that the proposal was in line with the work of the SCT and the General Assembly decision to examine different systems for the protection of geographical indications within its current mandate and covering all aspects. Pointing out that a comprehensive analysis of the current situation would facilitate the finding of solutions to enhance the protection of geographical indications in the DNS, the Delegation looked forward to the outcome of the discussion.

128. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the WIPO Secretariat for organizing the Information Session and all the participants for an interesting session, and the valuable contributions that were made to further debates. In scoping a future work program, the Delegation stressed the fact that a future work plan on geographical indications within the SCT should respect its mandate and, especially, should not aim to interpret or revise the provisions of the Geneva Act of the Lisbon Agreement, since any future revision of that Act was the exclusive prerogative of the Lisbon Union. The Delegation believed that the Committee's future work should avoid duplication of work already completed by the SCT or covered by existing treaties and intellectual property systems administered by WIPO, and should not focus on general topics, such as the scope and different means for the protection of geographical indications. Instead, the European Union and its member states believed that work on geographical indications should be focused exclusively on more specific topics such as the substantive discussion on geographical indications in the DNS.

That crucial topic was of concrete concern for stakeholders and the SCT had not discussed it in depth during the course of the last decade. The Delegation believed that conducting a study on geographical indications in the DNS, as proposed in document SCT/31/8 Rev.6, would fall within the scope of the General Assembly decision to examine different systems for the protection of geographical indications, within its current mandate and covering all aspects. In conclusion, the Delegation said that it would support a study which would investigate whether the needs of users for the protection of geographical indications in the DNS had changed, whether the available measures for holders of geographical indications against infringing domain names were effective enough and how the existing legal and procedural framework could be improved.

129. The Delegation of Italy, expressing its appreciation for the organization of the Information Session on Geographical Indications, stressed the fact that the protection of geographical indications was a key priority for Italy. Being a founding member of the Lisbon Union, Italy attached great importance to the implementation of the Lisbon Agreement and looked forward to the entry into force of the Geneva Act. Expressing its full support for WIPO's strategy to encourage members to ratify and accede to the Geneva Act of the Lisbon Agreement, the Delegation believed that the work of the SCT should not aim at interpreting or revising the said treaties since that was the exclusive prerogative of the Lisbon Union. As a consequence, the SCT should focus on concrete issues of concern to businesses, such as the relation between geographical indications and domain names. In conclusion, the Delegation considered that the Committee's future work should focus on substantive discussion on geographical indications and the DNS, or Internet names.

130. The Delegation of Senegal stated that the Information Session on Geographical Indications had been very useful and pragmatic, serving as a platform for an exchange of different experiences on geographical indications and allowing Member States to get updates on current protection mechanisms. Observing that the Information Session had given a complete view of the current situation with respect to geographical indications, the Delegation expressed the hope that SCT members would be able to agree on a work program on geographical indications in the SCT.

131. The Delegation of China expressed its gratitude for the organization of the Information Session on Geographical Indications and its appreciation for the rich presentations given by the panelists. In its view, in order to fulfill the General Assembly mandate to examine the different systems for the protection of geographical indications within its current mandate and covering all aspects, the SCT should study geographical indication *sui generis* and trademark systems. Bearing in mind that countries should be free to choose any suitable system for their own interests, the Delegation believed that it was necessary to agree on a more inclusive work plan on geographical indications. Taking note of the rapid development of the Internet and the exposure of geographical indications on the global network, it was imperative to provide for protection of geographical indications in the DNS. The Delegation concluded that priority should be given to the study of all existing protection systems for geographical indications and, based on that study, the SCT should decide on the further steps.

132. The Delegation of Bulgaria, expressing its appreciation for the efforts in organizing the Information Session on the different systems for the protection of geographical indications and how they can be used for protecting the interests of producers, reiterated its support for the joint proposal by the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Poland, Portugal, the Republic of Moldova, Spain, and Switzerland, and expressed the wish to add Bulgaria to the co-sponsors of the proposal. Concurring with other Delegations with regard to the different treatment of international organizations and individual countries in respect of the protection of their names, the Delegation believed that it was crucial to act quickly and begin to study the protection of geographical indications and country names in the DNS and on the Internet.

133. The Delegation of Portugal, aligning itself with other delegations in appreciating the Information Session on Geographical Indications, noted the quality of the panelists and the diversity of the issues that were covered. In that context, the Delegation believed that the voice of producers and operators sharing practical examples and concrete problems as to the protection of geographical indications in the DNS had raised deep concerns and demanded urgent action in order to find common and appropriate solutions. For that reason, the Delegation believed that those matters deserved further discussion within the SCT.

134. The Delegation of Brazil expressed its great interest in the discussion on geographical indications, thanking all the participants for the Information Session, which had helped to explore the existing systems for the protection of geographical indications. The Delegation, noting that Brazil had been investing in the development of a geographical indication protection system, pointed out that since 2002, when the first geographical indication had been granted, the number of registrations had reached 50 in September 2016. The Delegation believed that the assignment of new domain names should be based on the principle of protecting geographic names. Accordingly, geographic names should be protected against undue registration when they referred to regions of a particular significance, communities, historic heritage, or when public interest could be affected by the assignment of the domain name to private entities. Therefore, the Delegation supported the discussion on the protection of country names and geographic names in the DNS.

135. The Delegation of the Republic of Moldova, expressing its gratitude for the excellent preparation of the Information Session on Geographical Indications, reiterated its support for the joint proposal by the Delegations of Czech Republic, France, Germany, Hungary, Italy, Poland, Portugal, the Republic of Moldova, Romania, Spain, and Switzerland, contained in document SCT/31/8 Rev.6. Stressing the fact that the proposal had been based on current and real needs of geographical indication users and that it had generated broad support from SCT members, the Delegation believed that the SCT should start the discussion on geographical indications and the DNS. The Delegation expressed the view that carrying out a survey on geographical indications and the DNS would be an important activity, in line with the work of the SCT, which could benefit WIPO Member States and users. In conclusion, the Delegation stated that it wished to take advantage of informal discussions in order to initiate substantive discussion on that proposal.

136. The Delegation of the Republic of Korea, congratulating all participants in the Information Session on Geographical Indications, said that the Session had been very beneficial and instructive, further enhancing the understanding of the different national and regional geographical indication protection systems, as well as of the protection of geographical indications and country names in the DNS and on the Internet. The Delegation, reiterating its support for the proposal made by the Delegation of the United States of America, expressed the view that understanding the geographical indication protection system of each country was a prerequisite, before introducing an international geographical indication registration system. In that sense, the Delegation believed that the Information Session on Geographical Indications had served as a good opportunity to deepen the understanding of the different protection systems. In its view, the Geneva Act of the Lisbon Agreement had not taken into account all the various national geographical indication regimes implemented by WIPO Member States. Expressing its willingness to share with WIPO Member States the experience in implementing the geographical indication law in the Republic of Korea, the Delegation was determined to actively participate in the debates and contribute to make progress in the discussion on geographical indications.

137. The Representative of CTA, thanking all the participants in the Information Session on Geographical Indications, expressed its full support for the Committee's work on geographical indications. The Representative announced that more than 3,400 geographical indications had been registered in China.

138. The Delegation of Iceland, expressing its appreciation for the Information Session on Geographical Indications, lent its support to the proposal made by the Delegations of the Czech Republic, France, Germany, Hungary, Italy, Poland, Portugal, the Republic of Moldova, Spain and Switzerland.

139. The Delegation of Montenegro, expressing its gratitude for the Information Session on Geographical Indications, said that the Session had given a deeper insight about the topic, which was of a high relevance to the SCT. Aligning itself with the statements made by the Delegations of Italy, Georgia, on behalf of the CEBS Group, and the European Union, on behalf of its member states, the Delegation expressed its strong support for the joint proposal contained in document SCT/31/8 Rev.6, and for the proposal to conduct a study on the different geographical indication protection systems.

140. The Delegation of Peru, expressing its gratitude for the organization of the Information Session, said that the presentations on the different national and regional geographical indication protection systems and on the protection of geographical indications and country names in the DNS had been particularly interesting. Assuming that each country should be free to establish its own means for the protection of geographical indications, the Delegation considered that the Session had shown that there was a clear need to continue work on that agenda item within the SCT.

141. The Delegation of Sri Lanka, thanking the speakers in the Information Session on Geographical Indications, said that the discussion had been very informative and interactive, and that the knowledge acquired would be very useful for its country.

142. The Delegation of the United States of America said that it was extremely pleased with the Information Session on Geographical Indications, pointing out that the Session had had the effect to create a desire to get more information about the national and regional systems around the world. Noting that the Session had highlighted the concerns that many stakeholders had about the *status quo* on geographical indications, the Delegation expressed the view that that status did not appear to be working well for producers, trademark owners, common name users or consumers. Thus, more discussion was warranted on those topics. Expressing the hope that the discussion with experts from trademark and geographical indication systems would initiate, the Delegation expressed also its frustration to hear encouragements to join the Geneva Act of the Lisbon Agreement within the SCT while discussion on that topic had been denied. Setting that aside, the Delegation lent its support to the delegations which had expressed an interest in exploring the national systems around the world, before discussing international frameworks such as possible protection for geographical indications in the DNS and other various issues raised in a global scale. The Delegation concurred with the statement made by the Delegation of China that there were multiple systems around the world and that an understanding of those systems was necessary before proceeding to work at a higher level on a global scale. The Delegation also concurred with the statement expressed in the Information Session that advancing protection for geographical indications in the DNS or on the Internet would be premature, in light of the lack of international consensus and harmonization on geographical indications. As to exploring national systems, the Delegation said that it was not interested in a study, but in a dialogue. The Delegation believed that a dialogue within the SCT would be very valuable to understand each other's system and would make a big difference in finding a way forward. In conclusion, the Delegation proposed to start that dialogue on examination practices with specific questions on the application process, the examination criteria, the legal standing for enforcement actions and other.

143. The Delegation of Lesotho, thanking the Secretariat for the organization of the Information Session on Geographical Indications, said that the Session had been highly informative, with excellent speakers and pertinent topics. Noting that the topics had been particularly relevant for its country since no specific legislation on geographical indications was in force in Lesotho, the Delegation lent its support to the proposal to conduct a study on the national systems for the protection of geographical indications.

144. The Delegation of Australia, expressing its appreciation for the quality of the Information Session provided for the benefit of SCT members, said that the presentations had been highly informative and had provided a range of views and a balanced approach to the topic. Aligning itself with the view expressed by the Delegation of the United States of America, the Delegation said that geographical indications were a significant and contentious area of international intellectual property law. There could only be advantages in a discussion on specific issues of policy interest to SCT members, such as the different national systems for the protection of geographical indications and the different mechanisms for obtaining international protection. Expressing the view that the Information Session on Geographical Indications had been a very good first step, the Delegation considered that, as a next step, it would be useful for members to consider a member driven survey with an inclusive approach, regardless of the regimes for the protection of geographical indications. Finally, the Delegation stated that the survey could focus on policy objectives, practices and experiences in relation to particular aspects of geographical indications, giving each interested Member State the ability to respond, question and contribute, in the interest of SCT members.

145. The Delegation of Japan, expressing its appreciation for the Information Session on Geographical Indications, declared that the Session had helped to better understand the different systems for the protection of geographical indications. Expressing its support for a study to examine the various national legal approaches to specific geographical indication topics, the Delegation lent its support to the proposal made by the Delegation of the United States of America.

146. The Delegation of Jamaica, grateful for the Information Session on Geographical Indications, stated that the Session had been very informative and helpful, highlighting the different means for the protection for geographical indications and the lack thereof for geographical indications and country names in the DNS. Aligning itself with the statement made by the Delegation of Colombia, on behalf of GRULAC, the Delegation said that it aimed to contribute to forge, through the SCT, a comprehensive perspective of protection of geographical indications. In conclusion, the Delegation said that the issue of country names continued to be a problem and expressed the hope that the Committee would be able to find appropriate solutions, both for geographical indications and country names.

147. The Delegation of India welcomed the conducting of the Information Session, indicating that it had been insightful and interactive and had helped to enhance the understanding of the different systems. Taking into account the views expressed by various Member States, the Delegation proposed to conduct a study on national laws for the protection of geographical indications, in accordance with the Development Agenda recommendations which foresaw that the SCT should take an informed view on the issues related to geographical indications to guide its work.

148. The Delegation of Switzerland, aligning itself with all the Delegations in appreciating the Information Session on Geographical Indications, said that the Session had illustrated the extent to which the protection of geographical indications and national systems were still in evolution, with developments and adaptations on an ongoing basis. The discussion had shown that the subject was quite complex, justifying exchanges of information at a technical level. In the Delegation's view, the Session had been a platform for debate between experts, rather than

a political debate. Unlike the protection of geographical indications in national systems under the competence of the respective governments, the protection of geographical indications and country names on the Internet was not a sole competence of the governments, but a question of an intergovernmental approach, in cooperation with ICANN. Referring to the issue of geographical indications and country names in the DNS, the Delegation said that it wished to maintain the joint proposal, noting that it should be addressed on a priority basis within the Committee and reaffirming its demand for a study on that issue.

149. The Delegation of Chile, emphasizing the importance and the relevance of the discussion on geographical indications in the Information Session, indicated that an exchange of information on the different systems for the protection of geographical indications within the SCT was very important. Aligning itself with the statement made by the Delegation of Colombia, on behalf of GRULAC, the Delegation aimed at understanding the specificities of national systems and at finding the path forward. Expressing its support for the proposal made by the Delegation of the United States of America, the Delegation considered that the idea of a constructive dialogue, according to which SCT members could raise questions regarding national systems for the protection of geographical indications, was a useful tool to generate dialogue among SCT members. For the same reason, the Delegation commended the proposal on a study on the protection of geographical indications and country names within the DNS. The Delegation concluded by stating that the technical expertise that could be offered by WIPO Member States would contribute to enriching dialogues from an intellectual property point of view and to continuing the debate on that topic.

150. The Delegation of Argentina, commending the Information Session on Geographical Indications, stated that the Session had been extremely interesting and enriching, highlighting the differences between the systems and allowing a better understanding of the various national systems for the protection of geographical indications. Expressing the view that it was crucial to understand those questions, the Delegation supported the proposal put forward by the Delegation of the United States of America to carry out studies on national systems for the protection of geographical indications, based on a questionnaire, considering it as a useful tool to achieve that aim. In conclusion, the Delegation associated itself with the statement made by the Delegation of Colombia, on behalf of GRULAC.

151. The Delegation of Israel, expressing its support for the statement made by the Delegation of the United States of America, reiterated the view that an exchange of information regarding geographical indications between Members States in the form of an inclusive dialogue would be beneficial to all.

152. The Delegation of Zambia, referring to the statements made by the Delegations of China and the United States of America, said that the discussion on issues related to the different national systems for the protection of geographical indications would be useful for SCT members and especially for countries, like Zambia, which were in the process of developing their geographical indication legislation. In that regard, the Delegation expressed its support for the proposal to conduct a study on national systems for the protection of geographical indications, based on a questionnaire, as a first step in a geographical indication work program.

153. The Delegation of Colombia, in its national capacity, expressed its support for the proposal put forward by the Delegation of the United States of America to carry out a survey, based on a questionnaire that would allow an exchange of information regarding geographical indications among Members States, in the form of an inclusive dialogue.

154. The Representative of IPO, welcoming the proposal to carry out a survey on national systems for the protection of geographical indications based on a questionnaire, expressed interest in providing an informed perspective from geographical indication holders. He therefore asked that observers be given the opportunity to provide content and information, as it had been

the case with the design questionnaire. The Representative believed that his Organization's constituent members had significant and empirical experience and expert viewpoints on the various differences of national systems for the protection of geographical indications, which would assist the Committee in the general understanding of geographical indications.

155. The Chair stated that the successful Information Session on Geographical Indications had been a good basis for a discussion on the future work of the SCT, in line with the mandate given by the General Assembly. The Chair noted that, although the Delegations had expressed support for further work on geographical indications and some convergence had been reached, at that stage the proposals could not be merged. In order to make progress in the discussion, the Chair presented a Paper to the Committee, which compiled all the comments and statements made during the discussion. Further to introducing his Paper, the Chair invited Group Coordinators and interested Member States to hold informal consultations.

[Suspension]

156. The Chair informed the Committee of the outcome of the informal consultations. Announcing that minor changes had been made to his proposal, following the informal consultations, the Chair read the Paper to the Committee, as follows:

"The Information Session, which took place on March 28, 2017, provided useful information on i) the national and regional geographical indication protection systems and office practices for geographical indications around the world, and ii) the protection of geographical indications on the Internet, and geographical indications and country names in the DNS. The Information Session was a good basis to initiate an exchange of views on points i) and ii) referred to above.

As a further step, and in order to share more information and foster a constructive dialogue on those two topics, the Chair requests the Secretariat to compile a list of questions proposed by members and observers, for consideration by the SCT, which could form the basis of a questionnaire to be distributed to members and observers. The list of questions will be structured according to the following topics:

I. The national and regional geographical indication systems

- Definition and basis for protection (sign/indication subject of protection, goods/services covered, link...)
- Application and registration (entitlement to file, content of application, grounds for refusal, examination and opposition, ownership/right of use, requirements for geographical indications (*sui generis* and trademarks) from other countries...)
- Scope of protection and right to take action.

II. The protection of geographical indications on the Internet, and geographical indications, geographical terms and country names in the Domain Name System (DNS)

- Developments affecting geographical indications, geographical terms and country names in the DNS since the Second WIPO Internet Domain Name Process
- Protection of geographical indications under ccTLDs (basis for protection, protection mechanisms...)
- Unfair competition on the Internet involving geographical indications (examples and cases).

The Chair also requests the Secretariat to describe the existing state of play of geographical indications, country names and other geographical terms in the Domain Name System, with a view to further discussions on the matter by the SCT. Such description is to be added to the update on the DNS provided to the SCT.

The planning for the above is as follows:

- In April 2017, the Secretariat will send a circular inviting members and observers to propose the questions referred to above.
- Members and observers are to propose their questions to the Secretariat by the end of June 2017.
- The Secretariat will issue, by the end of August 2017, a document compiling the questions, for consideration of the SCT at its 38th session (to be held at the end of October).
- The SCT, will consider, at its 38th session, the above-mentioned document, with a view to issuing the questionnaire to members and observers, and, at its 39th session, a document prepared by the Secretariat compiling all the replies to the questionnaire. Furthermore, at its 38th session, the SCT will consider the above-mentioned description of the state of play.”

157. The Delegation of the United States of America, pointing out that it was highly encouraged by the constructive nature of the informal discussion and pleased to see the proposal by the Chair, said that it wished to make a few edits in order to possibly accelerate the timeline and also to ensure parity in the two survey efforts pursued by that document. Bearing in mind that a full work plan negotiation would be difficult at that stage, the Delegation said that it was looking at simple steps and an inclusive process. Taking into account what had been agreed during the informal consultations and expressing the wish that the responses to the questionnaire and the state of play of geographical indications, country names and other geographical terms in the DNS would be considered at the same time, the Delegation proposed new text, starting with the third paragraph, as follows:

“The Chair also requests the Secretariat to describe the existing state of play of geographical indications, country names and other geographical terms in the Domain Name System. Such description is to be added to the update on the DNS provided to the SCT.

The planning for the above is as follows:

- In April 2017, the Secretariat will send a circular inviting members and observers to submit the questions referred to above.
- The Secretariat will issue a document compiling the questions and inviting responses by June 2017.
- The SCT, will consider, at its 38th session, a document prepared by the Secretariat compiling all the replies to the questionnaire. At the same time the SCT will consider the above-mentioned description of the state of play.”

158. The Delegation of Indonesia, on behalf of the Asia and Pacific Group, expressed its support for the Chair’s original proposal. Noting that the amendments proposed by the Delegation of the United States of America did not seem to be minor, the Delegation asked to see them in writing.

159. The Delegation of Colombia, on behalf of GRULAC, acknowledged that the Group had comments on the Chair's proposal, more or less similar to the comments expressed by the Delegation of the United States of America. The Delegation further requested clarifications as to the meaning of the words "The SCT will consider".

160. The Delegation of the European Union, speaking on behalf of the European Union and its member states, concurred with the Delegation of Indonesia and requested that the proposal amending the Paper by the Chair, made by the Delegation of the United States of America, be submitted in writing.

161. The Delegation of Australia, thanking the Chair for his constructive proposal, expressed its support for the refinements, in order to accelerate the timeline and also to ensure parity and consideration of all members input. The Delegation concluded that it was eager to see some progress on both areas, as they had not been part of the SCT Agenda for the last meetings.

162. The Delegation of Switzerland, thanking the Chair for introducing the Paper, expressed the hope that the Chair's proposal would help nourish the discussions. The Delegation also wished to propose a few amendments to the Paper, which would read as follows:

"The Information Session, which took place on March 28, 2017, provided useful information on i) the national and regional legislations which can provide a certain protection to geographical indications and related office practices around the world, and ii) the protection of geographical indications on the Internet and of geographical indications and country names in the DNS. The Information Session was a good basis to initiate an exchange of views on points i) and ii) referred to above.

As a further step, and in order to share more information and foster a constructive dialogue on those two topics, the Chair requests the Secretariat to compile a list of questions proposed by Members, for consideration by the SCT, which could form the basis of a questionnaire to be distributed to Members. The list of questions will be structured according to the following topics:

I. The national and regional legislations which can provide a certain protection to geographical indications

- Definition and basis for protection (sign/indication subject of protection, goods/services covered, link between the product and its geographical origin...)
- Application and registration (entitlement to file, content of application, grounds for refusal, examination and opposition, ownership/right of use, requirements for geographical indications from other countries...)
- Scope of protection and right to take action.

II. The protection of geographical indications on the Internet, and geographical indications, geographical terms and country names in the Domain Name System (DNS)

- Protection of geographical indications, country names and geographical terms under ccTLDs (basis for protection, protection mechanisms...)
- Unfair competition on the Internet involving geographical indications, country names and geographical terms (examples and cases).

The planning for the above is as follows:

- In April 2017, the Secretariat will send a circular inviting members to propose the questions referred to above.
- Members are to propose their questions to the Secretariat by the end of October 2017.
- The Secretariat will issue, by the end of December 2017, a document compiling the questions, for consideration of the SCT at its 39th session.
- The SCT, will consider, at its 39th session, the above-mentioned document, with a view to issuing the questionnaire to members and observers, and, at its 40th session, a document prepared by the Secretariat compiling all the replies to the questionnaire.

The Chair also requests the Secretariat to provide, at the 38th session of the SCT, a document describing the existing state of play of the protection of geographical indications, country names and other geographical terms in the Domain Name System, with a view to further discussions on the matter by the SCT”.

163. The Delegation of Iran (Islamic Republic of), aligning itself with the statement made by the Delegation of Indonesia, on behalf of the Asia and Pacific Group, expressed its agreement with the original Paper proposed by the Chair. Since serious amendments had been proposed, the Delegation expressed the wish to see those proposals in writing.

164. The Delegation of Italy expressed its support for the amendments proposed by the Delegation of Switzerland, except in topic II, where it suggested adding “including under TLD, gTLD and ccTLD” at the end of the title of topic II and deleting the second bullet.

165. The Delegations of Iceland and Jamaica expressed their support for the amendments introduced by the Delegation of Switzerland, especially with regard to topic II.

166. The Delegations of Bulgaria and France expressed their support for the amendments proposed by the Delegation of Switzerland.

[Suspension]

167. Resuming the session, the Chair said that the SCT had had a very useful discussion. After consulting the Delegations, the Chair expressed the view that the SCT could not move forward based on the proposal by the Chair, which would remain at the consideration of the SCT for the next session. Informing the SCT that the Secretariat would prepare it as a working document for the next session, the Chair stated that, at that stage, the only conclusion he would draw was that the Information Session on Geographical Indications had been a good basis to initiate an exchange of views on topics I and II, referred to in the Chair’s proposal. Taking into account the successful Information Session and the fruitful discussion, the Chair stated that, at the next session, the SCT would consider further steps, based on the proposal by the Chair, and expressed the hope that the SCT would find a way to move forward.

168. In reply to a question for clarification from the Delegation of Indonesia, the Chair confirmed that the Proposal by the Chair, in the form of an SCT document, would be considered at the next session.

169. In reply to a suggestion by the Delegation of Switzerland to amend the first paragraph of the Chair's proposal in order to more faithfully cover the content of the Information Session on Geographical Indications, the Chair stated that points (I) and (II) of the first paragraph would be modified in order to reflect accurately the content of the Information Session.

170. The Chair noted that the Information Session, which took place on March 28, 2017, provided useful information on i) the features, experiences and practices of the different national and regional geographical indication protection systems, and ii) the protection of geographical indications on the Internet, and geographical indications and country names in the DNS. The Information Session was a good basis to initiate an exchange of views on points i) and ii) referred to above.

171. The Chair concluded that, at its next session, the SCT would consider further steps based on his proposal on the matter. All proposals on this item would remain on the Agenda.

AGENDA ITEM 9: ADOPTION OF THE SUMMARY BY THE CHAIR

172. The SCT approved the Summary by the Chair as presented in document SCT/37/8.

AGENDA ITEM 10: CLOSING OF THE SESSION

173. The Delegation of Italy, taking note of the Summary by the Chair and the conclusion on agenda item 8, said that it would expect that the proposal by the Delegation of Italy on that item would remain on the SCT Agenda.

174. 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 his habitual determination, and the Vice-Chairs, the Secretariat and the interpreters for their valuable assistance.

175. The Delegation of Senegal, speaking on behalf of the African Group, wished to thank the Chair for his work, as well as the Vice-Chairs, the Secretariat and all the delegations which had engaged actively in the discussions. The Delegation, referring to the General Statement by the African Group delivered on the first day of the SCT, expressed its deepest regret that not all the items of the SCT Agenda had been covered. The Delegation believed that, if all the items had been covered, the SCT would have had more time for the debates and would have managed to avoid the obstacles, and that would have led to a better understanding of people's concerns. Thanking the interpreters for helping the SCT members to understand each other, the Delegation expressed the hope that the SCT would find again its inclusive framework for negotiations.

176. The Delegation of Georgia, speaking on behalf of the CEBS Group, thanked the Chair for his skillful guidance through the work of the Committee, the Vice-Chairs and the Secretariat for the valuable effort invested in the preparation of the Committee and all the Delegations for their constructive statements. The Delegation believed that the week had proved to be an opportunity for both formal and informal dialogue, which had helped to move forward the common objectives. Recalling the Group's long standing position and the importance that the CEBS Group paid to the adoption of the DLT, the Delegation expressed the hope that the General Assembly would reach a decision on the convening of a diplomatic conference on the adoption of the DLT. Expressing its appreciation for the organization of the Information Session on Geographical Indications and for bringing experienced speakers to share their knowledge in

the field of geographical indications, the Delegation said that the Session had been a perfect possibility to help find solutions to advance the work of the Committee and that it looked forward to the next session to address the agenda items in a constructive way.

177. The Delegation of Turkey expressed its gratitude to the Chair and the Vice-Chairs for their commitment and dedication to the work of the Committee and to the Secretariat for organizing the meeting and the preparation of the Information Session on Geographical Indications.

178. The Delegation of Indonesia, speaking on behalf of the Asia and Pacific Group, congratulated the Chair and the Vice-Chairs for a successful and productive session of the SCT and extended its appreciation to the Secretariat, the Conference Service and interpreters. Welcoming the proposal by the Chair on the DLT, the Delegation encouraged WIPO Member States to make use of the valuable time until the General Assembly in October 2017 to bridge the remaining gaps. The Delegation also welcomed an Information Session on Industrial Designs and encouraged all delegations to participate actively. With regards to trademarks, the Asia and Pacific Group welcomed the way forward on discussion of country names, encouraged all Member States to submit further comments and looked forward to the analytical document based on revised document SCT/37/3. The Delegation also welcomed the decision to continue the practice and procedure of informing offices of the lists of recommended INNs. Concerning geographical indications, the Delegation commended all Member States for their active participation and contribution, both in the Plenary and at the informal session, on the future work program on geographical indications. Being optimistic regarding the original proposal by the Chair, the Delegation expressed its regret that the proposal based on constructive discussion was put on hold. Considering that it was time for the SCT to make progress on geographical indications, the Delegation encouraged all Member States to consider further the Chair's proposal regarding future work on geographical indications and concluded that the agenda item on geographical indications should deliver concrete results acceptable to all.

179. The Delegation of Brazil, congratulating the Chair for leading the Committee despite not reaching consensus on all items, looked forward to continued discussions on geographical indications at the next session.

180. The Chair thanked all the SCT members and the observers for their constructive spirit and input to the Committee's work. Considering that the subjects of discussion were not easy, the Chair believed that everyone had good reasons to defend their position and expressed the hope that the SCT members would be able to see the positive in the proposals of others. Thanking the Secretariat for the organization of the SCT meeting and the Information Session on Geographical Indications and the interpreters for the excellent translations, the Chair expressed the hope that the SCT would be able to make progress at its next session and at the General Assembly.

181. The Chair closed the session on March 30, 2017.

[Annexes follow]



SCT/37/8
ORIGINAL: ENGLISH
DATE: MARCH 30, 2017

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

Thirty-Seventh Session
Geneva, March 27 to 30, 2017

SUMMARY BY THE CHAIR

adopted by the Committee

AGENDA ITEM 1: OPENING OF THE SESSION

182. Mr. Francis Gurry, Director General of the World Intellectual Property Organization (WIPO), opened the thirty-seventh session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and welcomed the participants.

183. Mr. David Muls (WIPO) acted as Secretary to the SCT.

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

184. Mr. Adil El Maliki (Morocco) was re-elected Chair. Mr. Alfredo Carlos Rendón Algara (Mexico) was re-elected Vice-Chair, and Mr. Simion Levițchi (Republic of Moldova) was elected Vice-Chair.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

185. The SCT adopted the draft Agenda (document SCT/37/1 Prov. Rev.2).

AGENDA ITEM 4: ACCREDITATION OF A NON-GOVERNMENTAL ORGANIZATION (NGO)

186. The SCT considered document SCT/37/7.

187. The SCT approved the accreditation of the Centre for International Governance Innovation (CIGI).

AGENDA ITEM 5: ADOPTION OF THE DRAFT REPORT OF THE THIRTY-SIXTH SESSION

188. The SCT adopted the draft Report of the thirty-sixth session (document SCT/36/6 Prov.).

AGENDA ITEM 6: INDUSTRIAL DESIGNS

Design Law Treaty (DLT)

189. The Chair recalled his conclusion at SCT/36 that, “while the DLT would remain on its Agenda, the SCT should abide by the decision of the General Assembly”¹ and encouraged delegations to make use of the time available until the next session of the General Assembly in October 2017 to bridge remaining gaps.

Graphical User Interface (GUI), Icon and Typeface/Type Font Designs

190. The SCT considered documents SCT/36/2 Rev. and SCT/37/2.

191. After discussions, the Chair requested the Secretariat to:

- invite Member States to submit additional and/or revised replies to the *Questionnaire on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs*, as well as relevant examples;
- invite accredited NGOs to submit additional comments and observations on the topic, from the perspective of their experience;
- compile all replies, examples, comments and observations received in a revised document of SCT/36/2 Rev., for consideration of the SCT at its next session;
- prepare a revised document SCT/37/2, taking into account the additional comments, observations and examples received, for consideration of the SCT at its next session; and
- organize an information session, which will take place at SCT/38, addressing (i) the practices of offices and (ii) the experience of users, with regard to GUI, icon and typeface/type font designs.

¹ The 2016 General Assembly decided that “at its next session in October 2017, it will continue considering the convening of a diplomatic conference on the DLT, to take place at the end of the first half of 2018.”

Information on the Digital Access Service (DAS) for Priority Documents

192. The Chair noted the statements of certain delegations, which indicated that they are taking steps towards the implementation of the DAS for industrial designs in the short term.

193. While encouraging also other Member States to consider using the DAS for the exchange of priority documents for industrial designs and trademarks, the Chair concluded that the SCT would continue to take stock of the progress made in this regard at its future sessions.

AGENDA ITEM 7: TRADEMARKS

194. The SCT considered the documents under this Agenda item (documents SCT/32/2, SCT/37/3, SCT/37/4, SCT/37/5, SCT/37/6).

Protection of Country Names Against Registration and Use as Trademarks: Practices, Approaches and Possible Areas of Convergence – Comments by Members

195. After discussions, the Chair requested the Secretariat to:

- invite Member States to submit further comments and observations, in priority, to Areas of Convergence Nos. 1, 2, 5 and 6;
- compile all comments and observations received in a revised document SCT/37/3, in which any comments and observations to Areas of Convergence Nos. 3 and 4 will be moved to an Annex to the document; and
- prepare an analytical document² based on revised document SCT/37/3, for consideration of the SCT at its next session.

International Nonproprietary Names for Pharmaceutical Substances (INNs)

196. The SCT took note of the presentation made by the Representatives of the World Health Organization (WHO) regarding the Internet-based mechanisms made available by WHO to parties with appropriate credentials to access INN data directly online.

197. After discussions, the Chair requested the Secretariat:

- to liaise with the WHO to explore whether, and how, national and regional industrial property offices of WIPO Member States could make use of the above-mentioned mechanisms, and to report back to the SCT on this matter at SCT/39; and
- in the meantime, to continue its existing practice of informing offices of lists of proposed and recommended INNs.

² Analyzing the replies, comments and observations contained in the revised document SCT/37/3.

Update on Trademark-Related Aspects of the Domain Name System (DNS)

198. The SCT requested the Secretariat to keep delegations informed of future developments in the DNS.

AGENDA ITEM 8: GEOGRAPHICAL INDICATIONS

199. The Chair noted that the Information Session, which took place on March 28, 2017, provided useful information on i) the features, experiences and practices of the different national and regional geographical indication protection systems, and ii) the protection of geographical indications on the Internet, and geographical indications and country names in the DNS. The Information Session was a good basis to initiate an exchange of views on points i) and ii) referred to above.

200. The Chair concluded that, at its next session, the SCT will consider further steps based on his proposal on the matter. All proposals on this item will remain on the Agenda.

AGENDA ITEM 9: SUMMARY BY THE CHAIR

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

AGENDA ITEM 10: CLOSING OF THE SESSION

202. The Chair closed the session on March 30, 2017.

[Annex II follows]



SCT/37/INF/1
2 ORIGINAL : FRANCAIS/ANGLAIS
DATE : 30 APRIL 2017 / APRIL 30, 2017

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

Trente-septième session
Genève, 27 – 30 mars 2017

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

Thirty-Seventh Session
Geneva, March 27 to 30, 2017

LISTE DES PARTICIPANTS
LIST OF PARTICIPANTS

établie par le Secrétariat
prepared by the Secretariat

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique des noms français des États/in the alphabetical order of the names in French of the states)

AFRIQUE DU SUD/SOUTH AFRICA

Victoria Ntombentle Nosizwe DIDISHE (Ms.), Manager, Companies and Intellectual Property Commission (CIPC), Department of Trade and Industry (DTI), Pretoria

ALGÉRIE/ALGERIA

Naima KEBOUR (Mme), examinatrice spécialiste, Département des marques, Institut national algérien de la propriété industrielle (INAPI), Ministère de l'industrie, de la petite et moyenne entreprise et de la promotion des investissements, Alger
naimakebour2000@gmail.com

Zakia BOUYAGOUB (Mme), assistante technique principale, Département des marques, Institut national algérien de la propriété industrielle (INAPI), Ministère de l'industrie, de la petite et moyenne entreprise et de la promotion des investissements, Alger
zakia.bouyagoub@gmail.com

Fayssal ALLEK, premier secrétaire, Mission permanente, Genève
allek@mission-algeria.ch

ALLEMAGNE/GERMANY

Sabine LINK (Ms.), Senior Trademark Examiner, Trademarks and Designs Department, German Patent and Trade Mark Office (DPMA), Munich
sabine.link@dpma.de

ARABIE SAOUDITE/SAUDI ARABIA

Mohammed ALYAHAY, Deputy Director, Administrative Affairs, Saudi Patent Office, King Abdullaziz City for Science and Technology (KACST), Riyadh

Abdulaziz ALJTHALEEN, Counsellor, Ministry of Energy, Industry and Mineral Resources, Riyadh
jabaleen@hotmail.com

Rana AKEEL (Ms.), International Trade Officer, Commercial Attaché Office, Ministry of Commerce and Industry, Geneva
rakeel@mci.gov.sa

ARGENTINE/ARGENTINA

María Inés RODRÍGUEZ (Sra.), Ministro, Misión Permanente, Ginebra

AUSTRALIE/AUSTRALIA

Celia POOLE (Ms.), General Manager, Trade Marks and Designs Group, IP Australia, Canberra
celia.poole@ipaaustralia.gov.au

AUTRICHE/AUSTRIA

Young-Su KIM, Legal Advisor, International Trademark Affairs, The Austrian Patent Office,
Federal Ministry for Transport, Innovation and Technology, Vienna
young-su.kim@patentamt.at

BAHAMAS

Bernadette BUTLER (Ms.), Minister Counsellor, Permanent Mission, Geneva
bbutler@bahamasmission.ch

BARBADE/BARBADOS

Heather CLARKE (Ms.), Director, Corporate Affairs and Intellectual Property Office (CAIPO),
Ministry of Industry, International Business, Commerce and Small Business Development,
Bridgetown
hclarke@caipo.gov.bb

BÉLARUS/BELARUS

Andrew SHELEG, Head, Examination Division, Trademarks Department, National Center of
Intellectual Property (NCIP), State Committee on Science and Technologies, Minsk
icd@belgospatent.by

BHOUTAN/BHUTAN

Tenzin TSHERING, Legal Officer, Department of Intellectual Property, Ministry of Economic
Affairs, Royal Government, Thimphu
ttenzin@moea.gov.bt

Kinley WANGCHUK, Minister Counsellor, Permanent Mission, Geneva
kwangchuk1966@gmail.com

BRÉSIL/BRAZIL

Marcelo Luiz SOARES PEREIRA, General Coordinator, National Institute of Industrial
Property (INPI), Ministry of Development, Industry and Foreign Trade, Rio de Janeiro
marcelol@inpi.gov.br

Caue OLIVEIRA FANHA, Secretary, Permanent Mission to the World Trade
Organization (WTO), Geneva

Rosana DE LIMA BEZERRA (Ms.), Trainee, Geneva

BULGARIE/BULGARIA

Rakovski LASHEV, Ambassador, Deputy Permanent Representative, Permanent Mission, Geneva
rakovski.lashev@mfa.bg

Magdalena RADULOVA (Ms.), Director, Examination and Opposition of Trademarks and Geographical Indications, Patent Office of the Republic of Bulgaria (BPO), Sofia
mradulova@bpo.bg

Vladimir YOSSIFOV, Consultant, Intellectual Property Matters, Geneva

BURUNDI

René CISHAHAYO, directeur, Département de la propriété industrielle, Ministère du commerce, Direction générale de l'industrie et du tourisme, Bujumbura

CAMBODGE/CAMBODIA

Sombo HENG, Deputy Director, Intellectual Property Department (IPD), Ministry of Commerce (MOC), Phnom Penh
hengsombo@gmail.com

Lao REASEY, Deputy Director, Intellectual Property Department (IPD), Ministry of Commerce (MOC), Phnom Penh
reasey_pp34@yahoo.com

CAMEROUN/CAMEROON

Marie Béatrice NANGO NGUELE (Mme), chef, Service des brevets et des signes distinctifs, Division du développement technologique et de la propriété industrielle, Ministère des mines, de l'industrie et du développement technologique, Yaoundé

CANADA

Iyana GOYETTE (Ms.), Manager, Legislation and Practices, Trademarks Branch, Canadian Intellectual Property Office (CIPO), Ottawa

Frédérique DELAPRÉE (Ms.), First Secretary, Permanent Mission, Geneva

Chrystiane ROY (Ms.), First Secretary, Policy Development on Cyberspace, Permanent Mission, Geneva

CHILI/CHILE

Felipe FERREIRA CATALÁN, Consejero Jurídico, Departamento de Propiedad Intelectual, Dirección General de Relaciones Económicas Internacionales, Ministerio de Relaciones Exteriores, Santiago de Chile
fferreira@direcon.gob.cl

Marcela PAIVA (Sra.), Consejera, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra
mpaiva@minrel.gov.cl

CHINE/CHINA

LIU Heming, Project Administrator, Legal Affairs Department, State Intellectual Property Office of the People's Republic of China (SIPO), Beijing

ZHONG Yan, Project Administrator, State Intellectual Property Office of the People's Republic of China (SIPO), Beijing

CHYPRE/CYPRUS

Andreas IGNATIOU, Ambassador, Permanent Representative, Permanent Mission, Geneva

Demetris SAMUEL (Ms.), Counsellor, Deputy Permanent Representative, Permanent Mission, Geneva

Christina TSENTA (Ms.), Second Secretary, Permanent Mission, Geneva

COLOMBIE/COLOMBIA

Beatriz LONDOÑO SOTO (Sra.), Embajadora, Representante Permanente, Misión Permanente, Ginebra

Juan Carlos GONZÁLEZ VERGARA, Embajador, Representante Permanente, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

Juan Camilo SARETZKI FORERO, Ministro Consejero, Misión Permanente, Ginebra

Manuel Andrés CHACÓN, Consejero, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

Daniela Carolina PÉREZ MAHECHA (Sra.), Pasante, Misión Permanente, Ginebra
daniela.perez@misioncolombia.ch

COSTA RICA

Cristián MENA CHINCHILLA, Director, Registro de Propiedad Industrial, Registro Nacional, Ministerio de Justicia y Paz, San José
cmena@rnp.go.cr

CÔTE D'IVOIRE

Kumou MANKONGA, premier secrétaire, Mission permanente, Genève

CROATIE/CROATIA

Višnja KUZMANOVIĆ (Ms.), Head, Trademarks and Industrial Designs Department, State Intellectual Property Office of the Republic of Croatia (SIPO), Zagreb

CUBA

Madelyn RODRÍGUEZ LARA (Sra.), Primera Secretaria, Misión Permanente, Ginebra
m_rodriguez@missioncuba.ch

DANEMARK/DENMARK

Christian HELTØ, Legal Examiner, Danish Patent and Trademark Office, Ministry of Trade and Industry, Taastrup
jhl@dkpto.dk

DJIBOUTI

Ali DJAMA MAHAMOUD, Counsellor, Permanent Mission, Geneva

EL SALVADOR

Katia CARBALLO (Sra.), Ministra Consejera, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra
kcarballo@minec.gov.sv

ÉMIRATS ARABES UNIS/UNITED ARAB EMIRATES

Abdelsalam AL ALI, Ambassador, Permanent Mission to the World Trade Organization (WTO), Geneva

Fatima ALHOUSANY (Ms.), Director, Trademarks Department, Intellectual Property Sector, Ministry of Economy, Abu Dhabi

Shaima AL-AKEL (Ms.), Advisor, International Organizations Executive, Office of the United Arab Emirates to the World Trade Organization (WTO), Geneva

ESPAGNE/SPAIN

Lourdes VELASCO GONZÁLEZ (Sra.), Jefe, Signos Distintivos, Ministerio de Industria, Energía y Turismo, Madrid
lourdes.velasco@oepm.es

Oriol ESCALAS NOLLA, Consejero, Misión Permanente, Ginebra

ESTONIE/ESTONIA

Martin JÕGI, Advisor, Private Law Division, Ministry of Justice, Tallinn
martin.ioji@just.ee

Liina SEPP (Ms.), Lawyer, The Estonian Patent Office, Tallinn
liina.sepp@epa.ee

Evelin SIMER (Ms.), Counsellor, Ministry of Justice, Tallinn
evelin.simer@mfa.ee

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Amy COTTON (Ms.), Senior Counsel, Office of Policy and International Affairs, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria, Virginia
amy.cotton@uspto.gov

David GERK, Patent Attorney-Advisor, Office of Policy and International Affairs, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria, Virginia
david.gerk@uspto.gov

Yasmine FULENA (Ms.), Intellectual Property Advisor, Permanent Mission to the World Trade Organization (WTO), Geneva

Kristine SCHLEGELMILCH (Ms.), Intellectual Property Attaché, Permanent Mission, Geneva

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

Simcho SIMJANOVSKI, Head, State Office of Industrial Property (SOIP), Skopje

Elizabeta SIMONOVSKA (Ms.), Deputy Head, Department of Trademarks, Industrial Designs and Geographical Indications, State Office of Industrial Property (SOIP), Skopje
elizabeta.simonovska@ippo.gov.mk

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Liubov KIRIY (Ms.), Deputy Director General, Federal Service of Intellectual Property (ROSPATENT), Moscow

Tatiana ZMEEVSKAYA (Ms.), Head, Means of Individualization Division, Federal Service of Intellectual Property (ROSPATENT), Moscow

Olga ALEKSEEVA (Ms.), Advisor, Federal Institute of Intellectual Property (FIPS), Moscow

Natalia IAKOVLEVA (Ms.), Specialist, Legal Protection of Means of Individualization Division, Federal Institute of Intellectual Property (FIPS), Moscow

FINLANDE/FINLAND

Tapio PRIIA, Senior Legal Counsellor, Customer Relations and Legal Affairs, Finnish Patent and Registration Office, Helsinki
tapio.priia@prh.fi

FRANCE

Élisabeth LAURIN (Mme), ambassadeur, représentant permanent, Mission permanente, Genève

Thomas WAGNER, représentant permanent adjoint, Mission permanente, Genève

Francis GUÉNON, conseiller diplomatique, Mission permanente, Genève

Yann SCHMITT, conseiller politique, Mission permanente, Genève

Anne LAUMONIER (Mme), conseillère juridique, Ministère de l'agriculture, de l'agroalimentaire et de la forêt, Paris

Véronique FOUKS (Mme), chef, Service juridique et international, Institut national de l'origine et de la qualité, Montreuil-sous-Bois

Indira LEMONT SPIRE (Mme), conseillère juridique, Service des affaires européennes et internationales, Institut national de la propriété industrielle (INPI), Courbevoie
ilemontspire@inpi.fr

Pierre BONIS, directeur général adjoint, Association française pour le nommage Internet en coopération, Montigny le Bretonneux

GÉORGIE/GEORGIA

Sophio MUJIRI (Ms.), Deputy Chairperson, National Intellectual Property Center (SAKPATENTI), Mtskheta
smujiri@sakpatenti.org.ge

Ana GOBECHIA (Ms.), Head, International Affairs Unit, National Intellectual Property Center (SAKPATENTI), Mtskheta
a.gobechia@sakpatenti.org.ge

GHANA

Alexander Grant NTRAKWA, Minister, Permanent Mission, Geneva

Joseph OWUSU-ANSAH, Counsellor, Permanent Mission, Geneva

GRÈCE/GREECE

Myrto LAMBROU MAURER (Ms.), Head, International Affairs, Industrial Property Organization (OBI), Athens

GUATEMALA

Martín Nolberto LÓPEZ SALAZAR, Abogado Asesor Jurídico y Jefe del Departamento de Oposiciones, Registro de la Propiedad Intelectual, Ministerio de Economía, Guatemala

Flor de María GARCÍA DÍAZ (Srta.), Consejera, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra
flor.garcia@wtoguatemala.ch

GUINÉE/GUINEA

Aminata KOUROUMA-MIKALA (Mme), conseillère, chargée des affaires économiques et commerciales, Mission permanente, Genève

HONGRIE/HUNGARY

Imre GONDA, Deputy Head, Trademark, Model and Design Department, Hungarian Intellectual Property Office (HIPO), Budapest
imre.gonda@hipo.gov.hu

INDE/INDIA

Paul VIRANDER, Ambassador, Deputy Permanent Representative, Permanent Mission, Geneva

Sumit SETH, First Secretary, Economic Affairs, Permanent Mission, Geneva

INDONÉSIE/INDONESIA

Fathlurachman FATHLURACHMAN, Director, Trademarks and Geographical Indications, Directorate General of Intellectual Property, Ministry of Law and Human Rights, Jakarta

Erni WIDHYASTARI, Director, Copyright and Industrial Designs, Directorate General of Intellectual Property, Ministry of Law and Human Rights, Jakarta

Erry Wahyu PRASETYO, Third Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva
erry.prasetyo@mission-indonesia.org

IRAN (RÉPUBLIQUE ISLAMIQUE D')/IRAN (ISLAMIC REPUBLIC OF)

Gholemrez BAYAT, Head, Trademark Office, Intellectual Property General Office, State Organization for Registration of Deeds and Properties, Tehran

Reza DEGHANI, First Secretary, Permanent Mission, Geneva
rezadehghani58@yahoo.com

IRLANDE/IRELAND

Mary KILLEEN (Ms.), Attaché, Permanent Mission, Geneva

ISLANDE/ICELAND

Högni KRISTJÁNSSON, Ambassador, Permanent Representative, Permanent Mission, Geneva
hogni@mfa.is

Sigrún Brynja EINARSDÓTTIR (Ms.), Director General, Department of Business Affairs, Innovation and Tourism, Ministry of Industries and Innovation, Reykjavik
sigrun.brynja.einarsdottir@anr.is

Borghildur ERLINGSDÓTTIR (Ms.), Director General, Iceland Patent Office, Ministry of Education, Science and Culture, Reykjavik
borghildur@els.is

Margrét HJÁLMARSDÓTTIR (Ms.), Head, Office of Legal Affairs, Iceland Patent Office, Ministry of Education, Science and Culture, Reykjavik
margret@els.is

Anna Katrin VILHJÁLMSDÓTTIR (Ms.), Counsellor, Directorate for External Trade and Economic Affairs, Ministry of Foreign Affairs, Reykjavik

ISRAËL/ISRAEL

Howard POLINER, Head, Intellectual Property Department, Ministry of Justice, Jerusalem

Rodolfo Carlos RIVAS REA, Senior Counsellor, Economic and Legal Affairs, Permanent Mission to the World Trade Organization (WTO), Geneva
rodolfo@israeltrade.gov.il

Yotal FOGEL (Ms.), Advisor, Permanent Mission, Geneva

Judith GALILEE METZER (Ms.), Counsellor, Permanent Mission, Geneva

ITALIE/ITALY

Renata CERENZA (Ms.), Head, Ministry of Economic Development, Italian Patent and Trademark Office, Directorate General of Combating Counterfeiting, Ministry of Economic Development (UIBM), Rome
renata.cerENZA@mise.gov.it

Michele MILLE, Expert, Italian Patent and Trademark Office, Directorate General of Combating Counterfeiting, Ministry of Economic Development (UIBM), Rome
renata.cerENZA@mise.gov.it

Bruna GIOIA (Ms.), Administrative Officer, Italian Patent and Trademark Office, Directorate General of Combating Counterfeiting, Ministry of Economic Development (UIBM), Rome

Matteo EVANGELISTA, First Secretary, Permanent Mission, Geneva
matteo.evangelista@esteri.it

Alessandro MANDANICI, First Secretary, Permanent Mission, Geneva
alessandro.mandanici@esteri.it

JAMAÏQUE/JAMAICA

Marcus Gregory GOFFE, Deputy Director, Legal Counsel, Jamaica Intellectual Property Office (JPO), Kingston

JAPON/JAPAN

Daisuke KUBOTA, Director, Design Registration System Planning Office, Japan Patent Office (JPO), Tokyo
kubota-daisuke@jpo.go.jp

Tatsuo TAKESHIGE, Director, Multilateral Policy Office, Japan Patent Office (JPO), Tokyo
takeshige-tatsuo@jpo.go.jp

Jun MEGURO, Trademark Examiner, Trademark Policy Planning Office, Japan Patent Office (JPO), Tokyo
meguro-jun@jpo.go.jp

Kenji SAITO, First Secretary, Permanent Mission, Geneva

KENYA

Chrisitim KHISA, Expert, Ministry of Agriculture, Livestock and Fisheries, Nairobi
wekesa.khisa@gmail.com

Frankie WAMBANI (Ms.), Interim Head, Legal Affairs, Permanent Mission, Geneva
frankiewelikhe@yahoo.com

Peter KAMAU, Counsellor, Permanent Mission, Geneva
pmkamau2012@gmail.com

Stanley MWENDIA, Expert, Permanent Mission, Geneva
kingamwendia@gmail.com

KOWEÏT/KUWAIT

[Abdulaziz TAQI, commercial attaché, Permanent Mission, Geneva](#)

RÉPUBLIQUE DÉMOCRATIQUE POPULAIRE LAO/LAO PEOPLE'S DEMOCRATIC
REPUBLIC

Khounekham INTHASANE, Third Secretary, Economic and Commerce, Permanent Mission,
Geneva
mrkiam@yahoo.com

LESOTHO

Mampoi TAOANA (Ms.), Crown Attorney, Registrar General, Ministry of Law, Constitutional
Affairs and Human Rights, Maseru
mampoi.taoana@gmail.com

LETTONIE/LATVIA

Janis KARKLINS, Ambassador, Permanent Representative, Permanent Mission, Geneva

Baiba GRAUBE (Ms.), Head, Department of Trademarks and Industrial Designs, Patent Office
of the Republic of Latvia, Riga
baiba.graube@lrpv.gov.lv

Liene GRIKE (Ms.), Advisor, Economic and Intellectual Property Affairs, Permanent Mission,
Geneva

LIBAN/LEBANON

Claire DIB (Ms.), Expert, Trademarks, Office of Intellectual Property, Department of Intellectual
Property, Directorate General of Economy and Trade, Ministry of Economy and Trade, Beirut
cdib@economy.gov.lb

LITUANIE/LITHUANIA

Lina MICKIENĖ (Ms.), Deputy Director, State Patent Bureau of the Republic of Lithuania, Vilnius
lina.mickiene@vpb.gov.lt

Renata RINKAUSKIENE (Ms.), Counsellor, Permanent Mission, Geneva
renata.rinkauskiene@urm.lt

MALI

Amadou Opa THIAM, conseiller, Mission Permanente, Genève
amadouopa@yahoo.fr

MALTE/MALTA

Hubert FARRUGIA, conseiller, Mission permanente, Genève

MAROC/MOROCCO

Mohamed AUJJAR, ambassadeur, représentant permanent, Mission permanente, Genève
mission.maroc@ties.itu.int

Adil EL MALIKI, directeur général, Office marocain de la propriété industrielle et commerciale (OMPIC), Casablanca
adil.elmaliki@ompic.org.ma

Hassan BOUKILI, conseiller, représentant permanent adjoint, Mission permanente, Genève

Khalid DAHBI, conseiller, Mission permanente, Genève
dahbi@mission-maroc.ch

MAURITANIE/MAURITANIA

Cheikh SHEIBOU, conseiller, Mission permanente, Genève

MEXIQUE/MEXICO

Jorge LOMÓNACO TONDA, Embajador, Representante Permanente, Misión Permanente, Ginebra

Juan Raúl HEREDIA ACOSTA, Embajador, Representante Permanente Adjunto, Misión Permanente, Ginebra

Alfredo Carlos RENDÓN ALGARA, Director General Adjunto, Instituto Mexicano de la Propiedad Industrial (IMPI), Ciudad de México

Karla Priscila JUÁREZ BERMÚDEZ (Sra.), Especialista en Propiedad Industrial, Instituto Mexicano de la Propiedad Industrial (IMPI), Ciudad de México

María del Pilar ESCOBAR BAUTISTA (Sra.), Consejera, Misión Permanente, Ginebra

MONACO

Gilles REALINI, premier secrétaire, Mission permanente, Genève

MONTENEGRO

Dušanka PEROVIĆ (Ms.), Assistant Director, Industrial Property Department, Intellectual Property Office of Montenegro, Podgorica
dusankacopyright@t-com-me

NICARAGUA

Hernan ESTRADA ROMÁN, Embajador, Misión Permanente, Ginebra

Nohelia Carolina VARGAS IDIÁQUEZ (Sra.), Primer Secretario, Misión Permanente, Ginebra
nohelia.vargasi@gmail.com

NIGÉRIA/NIGERIA

Chichi UMESI (Ms.), Counsellor, Permanent Mission, Geneva

NORVÈGE/NORWAY

Trine HVAMMEN-NICHOLSON (Ms.), Senior Legal Advisor, Norwegian Industrial Property Office (NIPO), Oslo
thv@patentstyret.no

Ingeborg Anne RÅSBERG (Ms.), Senior Legal Advisor, Norwegian Industrial Property Office (NIPO), Oslo
iar@patentstyret.no

UGANDA/UGANDA

George Tebagana, Third Secretary, Permanent Mission, Geneva

PAKISTAN

Amar Aftab Qureshi, Ambassador, Acting Permanent Representative, Permanent Mission, Geneva

Mariam Saheed (Ms.), First Secretary, Permanent Mission, Geneva

Bilal Akram Shah, First Secretary, Permanent Mission, Geneva

PANAMA

Krizia Matthews (Sra.), Asesora Legal, Misión Permanente, Ginebra

PARAGUAY

Raquel Pereira, Agregado, Misión Permanente, Ginebra

PAYS-BAS/NETHERLANDS

Saskia Jurna (Ms.), Policy Officer, Intellectual Property Department, Netherlands Patent Office, Netherlands Enterprise Agency, Ministry of Economic Affairs, The Hague
s.i.jurna@minez.nl

PÉROU/PERU

Luis Mayaute Vargas, Ministro Consejero, Misión Permanente, Ginebra

Ray Augusto Meloni García, Director, Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI), Presidencia del Consejo de Ministros (PCM), Lima

PHILIPPINES

Jayroma Bayotas (Ms.), Attaché, Permanent Mission, Geneva
jheng0503bayotas@gmail.com

Arnel Talisayon, First Secretary, Permanent Mission, Geneva
agtalisayon@gmail.com

POLOGNE/POLAND

Edyta DEMBY-SIWEK (Ms.), Director, Trademark Department, Patent Office of the Republic of Poland, Warsaw
edemby-siwiek@uprp.pl

Anna DACHOWSKA (Ms.), Expert, Trademark Department, Patent Office of the Republic of Poland, Warsaw
adachowska@uprp.pl

Wojciech PIATKOWSKI, Minister Counsellor, Permanent Mission, Geneva

PORTUGAL

Inês VIEIRA LOPES (Ms.), Director, External Relations and Legal Affairs, National Institute of Industrial Property (INPI), Ministry of Justice, Lisbon

João PINA DE MORAIS, First Secretary, Permanent Mission, Geneva

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

KIM Jongkyun, Deputy Director, Design Examination Policy Division, Korean Intellectual Property Office (KIPO), Daejeon
kisog111@korea.kr

SONG Kijoong, Deputy Director, Trademark Examination Policy Division, Korean Intellectual Property Office (KIPO), Daejeon
kisog111@korea.kr

KIM Taejin, Judge, Suwon Court, Daejeon
ststarholic@scourt.go.kr

RÉPUBLIQUE DE MOLDOVA/REPUBLIC OF MOLDOVA

Simion LEVIȚCHI, Head, Trademarks and Industrial Designs Department, State Agency on Intellectual Property of the Republic of Moldova (AGEPI), Chisinau
simion.levitchi@agepi.gov.md

Marin CEBOTARI, Counsellor, Permanent Mission, Geneva

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Katerina DLABOLOVA (Ms.), Legal, International Department, Industrial Property Office, Prague
kdlabolova@upv.cz

ROUMANIE/ROMANIA

Cătălin NIȚU, Director, Legal, Appeals, International Cooperation and European Affairs
Directorate, State Office for Inventions and Trademarks (OSIM), Bucharest
catalin.nitu@osim.ro

Dănut NEACȘU, Legal Advisor, Legal, International Cooperation and European Affairs
Directorate, State Office for Inventions and Trademarks (OSIM), Bucharest

ROYAUME-UNI/UNITED KINGDOM

Clare HURLEY (Ms.), Head, Brands and International Trade Mark Policy, Intellectual Property
Office, Newport
clare.hurley@ipo.gov.uk

Cassie PHELPS (Ms.), Policy Advisor, Trade Mark and Designs Policy, Intellectual Property
Office, Newport
cassie.phelps@ipo.gov.uk

SAINT-MARIN/SAN MARINO

Marcello BECCARI, Ambassador, Permanent Mission, Geneva
mission.rsm@hotmail.com

Elena PATRIZI (Ms.), Intern, Permanent Mission, Geneva
mission.rsm@hotmail.com

SÉNÉGAL/SENEGAL

Ibrahima DIOP, chef, Office de propriété industrielle, Agence sénégalaise pour la propriété
industrielle et l'innovation technologique (ASPIT), Ministère du commerce, de l'industrie et de
l'artisanat, Dakar
ibrahimagates@yahoo.fr

Lamine Ka MBAYE, premier secrétaire, Mission permanente, Genève
repsengen@yahoo.fr

SINGAPOUR/SINGAPORE

Isabelle TAN (Ms.), Acting Director, Trade Marks, Intellectual Property Office of
Singapore (IPOS), Singapore
isabelle_tan@ipos.gov.sg

Wee Ying FOO (Ms.), Trade Mark Examiner, Intellectual Property Office of Singapore (IPOS),
Singapore
foo_wee_ying@ipos.gov.sg

SLOVAQUIE/SLOVAKIA

Anton FRIC, Counsellor, Permanent Mission, Geneva

SOMALIE/SOMALIA

Faduma ABDULLAHI MOHAMUD (Ms.), Ambassador, Permanent Representative, Permanent Mission, Geneva
genevamiission@mfa.gov.so

Sharmake Ali HASSAN, Third Secretary, Permanent Mission, Geneva

SRI LANKA

Ravinatha ARYASINGHA, Ambassador, Permanent Representative, Permanent Mission, Geneva

Chinthaka Samarawicrama LOKUHETTI, Secretary, Ministry of Industry and Commerce, Colombo
secretarymid@gmail.com

Shashika SOMERATHNE, Counsellor, Permanent Mission, Geneva

Dilini GUNASEKARA, Second Secretary, Permanent Mission, Geneva

SUÈDE/SWEDEN

Kristian BLOCKENS, Legal Officer, Swedish Patent and Registration Office (SPRO), Söderhamn
kristian.blockens@prv.se

Martin BERGER, Legal Advisor, Swedish Patent and Registration Office (SPRO), Söderhamn
martin.berger@prv.se

SUISSE/SWITZERLAND

Gilles AEBISCHER, conseiller juridique, Division du droit et des affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

Nicolas GUYOT YOUN, conseiller juridique, Division du droit et des affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

Marie KRAUS (Mme), conseillère juridique, Division du droit et des affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

Erik THÉVENOD-MOTTET, conseiller juridique, expert en indications géographiques, Institut fédéral de la propriété intellectuelle (IPI), Berne

Reynald VEILLARD, conseiller, Division du droit et des affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

Jorge CANCIO, expert, relations internationales, Office fédéral de la communication, Département fédéral de l'environnement, des transports, de l'énergie et des communications, Biel

Stéphane BONDALLAZ, conseiller juridique, Office fédéral de la communication, Département fédéral de l'environnement, des transports, de l'énergie et des communications, Biel

Timothée BARGHOUTH, stagiaire, Division du droit et des affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

TADJIKISTAN/TAJIKISTAN

Parviz MIRALIEV, Head, Department of International Registration of Trademarks, National Center for Patents and Information (NCPI), Ministry of Economic Development and Trade of the Republic of Tajikistan, Dushanbe

THAÏLANDE/THAILAND

Puttipat JIRUSCHAMNA, Legal Officer, Department of Intellectual Property (DIP), Ministry of Commerce, Nonthaburi
putjir@gmail.com

TUNISIE/TUNISIA

Walid DOUDECH, ambassadeur, représentant permanent, Mission permanente, Genève

Nafaa BOUTITI, directeur adjoint, Département de la propriété intellectuelle, Institut national de la normalisation et de la propriété industrielle (INNORPI), Tunis
nafaa.boutiti@innorpi.tn

Nasreddine NAOUALI, conseiller, affaires étrangères, Mission permanente, Genève
n.naouali@diplomatie.gov.tn

TURQUIE/TURKEY

Melih YELEN, Trademarks Examiner, Turkish Patent and Trademark Office (TURKPATENT), Ankara
melih.yelen@turkpatent.gov.tr

TUVALU

Efren JOGIA, Senior Crown Counsel, Office of the Prime Minister, Attorney General's Office, Funafuti
avadra.kedavra@gmail.com

UKRAINE

Pavlov DMYTRO, Head, Rights to Results of Scientific and Technical Activity Department, Ministry of Economic Development and Trade, State Intellectual Property Service, State Enterprise "Ukrainian Institute of Industrial Property" (Ukrpatent), Kiyv
dimitry_pvlov@ukrpatent.org

Larysa PLOTNIKOVA (Ms.), Head, Division of Examination on Claims for Marks and Industrial Designs, Ministry of Economic Development and Trade, State Intellectual Property Service, State Enterprise "Ukrainian Institute of Industrial Property" (Ukrpatent), Kiyv
plotnikova@ukrpatent.org

URUGUAY

Juan José BARBOZA, Consejero, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

ZAMBIE/ZAMBIA

Jethro NDHLOVU, Examiner, Trademarks Division, Industrial Property Department, Patents and Companies Registration Agency (PACRA), Lusaka

ZIMBABWE

Roda NGARANDE (Ms.), Counsellor, Permanent Mission, Geneva

UNION EUROPÉENNE*/EUROPEAN UNION*

Francis FAY, Head, Directorate General Agriculture, European Commission, Brussels

Oscar MONDEJAR, Head, Legal Practice Service, International Cooperation and Legal Affairs Department, European Union Intellectual Property Office (EUIPO), Alicante

Margreet GROENENBOOM (Ms.), Legal and Policy Affairs Officer, Directorate General for the Internal Market and Services, European Commission, Brussels

Natalie NATHON (Ms.), Policy Officer, Directorate General Agriculture, European Commission, Brussels

Oliver HALL-ALLEN, First Counsellor, Permanent Mission, Geneva

Michele EVANGELISTA (Ms.), Intern, Permanent Mission, Geneva

* 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.

II. OBSERVATEURS/OBSERVERS

PALESTINE

Ashraf HMIDAN, Director, Trademarks Department, Intellectual Property Rights General Directorate, Ministry of National Economy, Ramallah
ashrafh@met.gov.ps

Ibrahim MUSA, Counsellor, Permanent Mission, Geneva

III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/ INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

CENTRE SUD (CS)/SOUTH CENTRE (SC)

Nirmalya SYAM, Program Officer, Development, Innovation and Access to Knowledge Program, Geneva
syam@southcentre.int

Viviana MUÑOZ TELLEZ (Ms.), Coordinator, Development, Innovation and Intellectual Property Program, Geneva
munoz@southcentre.int

Yujiao CAI (Ms.), Intern, Development, Innovation and Intellectual Property Program, Geneva
cai@southcentre.int

ORGANISATION AFRICAINE DE LA PROPRIÉTÉ INTELLECTUELLE (OAPI)/AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (OAPI)

Jacqueline Taylor BISSONG HELIANG (Mme), chef, Service des affaires juridiques, de la coopération et des questions émergentes, Yaoundé
jheliang@yahoo.fr

Michel GONOMY, chef, Service formation et programme, responsable du Programme des indications géographiques, Yaoundé
gonomys@gmail.com

ORGANISATION BENELUX DE LA PROPRIÉTÉ INTELLECTUELLE (OBPI)/BENELUX ORGANISATION FOR INTELLECTUAL PROPERTY (BOIP)

Camille JANSSEN, juriste, Département des affaires juridiques, La Haye

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

Catherine TEYSSIER (Ms.), Project coordinator, Quality and Origin, Voluntary Standards Market Linkages and Value Chains Group, Rome
catherine.teyssier@fao.org

ORGANISATION MONDIALE DE LA SANTÉ (OMS)/WORLD HEALTH ORGANIZATION (WHO)

Raffaella BALOCCO MATTAVELLI (Ms.), Group Lead, International Nonproprietary Names (INN) Programme, Geneva

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE ORGANIZATION (WTO)

Wolf MEIER-EWERT, Counsellor, Geneva
wolf.meier-ewert@wto.org

Leticia CAMINERO (Ms.), Junior Legal Professional, Intellectual Property, Government Procurement and Competition Division, Geneva
leticia.caminero@wto.org

UNION AFRICAINE (UA)/AFRICAN UNION (AU)

Georges Remi NAMEKONG, Senior Economist, Permanent Mission, Geneva

UNION ÉCONOMIQUE ET MONÉTAIRE OUEST AFRICAINE (UEMOA)/WEST AFRICAN ECONOMIC AND MONETARY UNION (WAEMU)

Koffi GNAKADJA, conseiller, Genève
uemoa.gva@gmail.com

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

Association européenne des étudiants en droit (ELSA International)/European Law Student's Association (ELSA International)

Oiha MARTYSCH (Ms.), Head, Brussels
Federica FRANCHETTI (Ms.), Representative, Brussels
Ezgi OZDOGAN (Ms.), Representative, Brussels
Elisabetta COLOMBO (Ms.), Representative, Brussels

Association française des praticiens du droit des marques et modèles (APRAM)

Eve Marie WILMANN-COURTEAU, Représentant, Paris

Association internationale des juristes pour le droit de la vigne et du vin (AIDV)/International Wine Law Association (AIDV)

Matthijs GEUZE, Representative, Divonne-les-Bains
matthijs.geuze77@gmail.com

Association internationale pour la protection de la propriété intellectuelle (AIPPI)/International Association for the Protection of Intellectual Property (AIPPI)

Elio DE TULLIO, Observer, Zurich
Elena MOLINA (Ms.), Observer, Zurich

Association internationale pour les marques (INTA)/International Trademark Association (INTA)
Bruno MACHADO, Geneva Representative, Rolle
bruno.machado@bluewing.ch

Association japonaise des conseils en brevets (JPAA)/Japan Patent Attorneys Association (JPAA)
Fumie ENARI, Expert, Tokyo
Tadafumi ITAGAKI, Expert, Tokyo
Kotaro ITO, Expert, Tokyo
gyoumukokusai@jpaa.or.jp

Association japonaise pour les marques (JTA)/Japan Trademark Association (JTA)
Katsuyuki KOBAYASHI, Member, Tokyo
kobayashi@karin-ip.com

Centre d'études internationales de la propriété intellectuelle (CEIPI)/Centre for International Intellectual Property Studies (CEIPI)
François CURCHOD, chargé de mission, Genolier
francois.curchod@vtxnet.ch

China Trademark Association (CTA)
YANG Fang Cheng, Vice-President, Beijing

Fédération internationale des conseils en propriété intellectuelle (FICPI)/International Federation of Intellectual Property Attorneys (FICPI)
Michael THOMA, Representative, CET Group 1, Munich

Intellectual Property Owners Association (IPO)
Richard STOCKTON, Attorney, Chicago
rstockton@bannerwitcoff.com

MARQUES - Association des propriétaires européens de marques de commerce/
MARQUES - The Association of European Trade Mark Owners
Alessandro SCIARRA, Chair, Geographical Indications Team, Milano
Oliver NILGEN, Member, Designs Team, Bern
Miguel Angel MEDINA, Member, Geographical Indications Team, Madrid

Organisation pour un réseau international des indications géographiques (oriGIn)/Organization for an International Geographical Indications Network (oriGIn)
Massimo VITTORI, Managing Director, Geneva
massimo@origin-gi.com
Ida PUZONE (Ms.), Project Manager, Geneva
ida.puzone@origin-gi.com
Fernando CANO TREVINO, Expert, Geneva
Angelica GRECO (Ms.), Consultant, Geneva
Alessandra ZUCCATO (Ms.), Expert, Geneva

Société pour l'attribution des noms de domaine et des numéros sur Internet (ICANN)/
Internet Corporation for Assigned Names and Numbers (ICANN)

Nigel HICKSON, Vice President, Europe and Middle East, Geneva
nigel.hickson@icann.org

Tarek KAMEL, Vice President, Senior Advisor, Geneva

Laurent FERRALI, Advisor, Geneva

laurent.ferrali@icann.org

Third World Network Berhad (TWN)

Gopakumar KAPPOORI, Legal Advisor, Geneva

Sangeeta SHASHIKANT (Ms.), Legal Advisor, Geneva

V. BUREAU/OFFICERS

Président/Chair: Adil El MALIKI (Maroc/Morocco)

Vice-présidents/Vice-chairs: Simion LEVITCHI (République de Moldova/Republic of
Moldova)

Alfredo Carlos RENDÓN ALGARA (Mexique/Mexico)

Secrétaire/Secretary: David MULS (OMPI/WIPO)

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

Francis GURRY, directeur général/Director General

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

David MULS, directeur principal, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Senior Director, Law and Legislative Advice Division, Brands and Designs Sector

Brian BECKHAM, chef, Section du règlement des litiges relatifs à l'Internet, Centre d'arbitrage et de médiation de l'OMPI, Secteur des brevets et de la technologie/Head, Internet Dispute Resolution Section, WIPO Arbitration and Mediation Center, Patents and Technology Sector

Martha PARRA FRIEDLI (Mme/Ms.), chef, Section du droit des marques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Head, Trademark Law Section, Law and Legislative Advice Division, Brands and Designs Sector

Marie-Paule RIZO (Mme/Ms.), chef, Section du droit des dessins et modèles et des indications géographiques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Head, Design and Geographical Indication Law Section, Law and Legislative Advice Division, Brands and Designs Sector

Marina FOSCHI (Mme/Ms.), juriste, Section du droit des dessins et modèles et des indications géographiques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Legal Officer, Design and Geographical Indication Law Section, Law and Legislative Advice Division, Brands and Designs Sector

Violeta GHETU (Mme/Ms.), juriste, Section du droit des dessins et modèles et des indications géographiques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Legal Officer, Design and Geographical Indication Law Section, Law and Legislative Advice Division, Brands and Designs Sector

Nathalie FRIGANT (Mme/Ms.), juriste adjointe, Section du droit des dessins et modèles et des indications géographiques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Assistant Legal Officer, Design and Geographical Indication Law Section, Law and Legislative Advice Division, Brands and Designs Sector

Noëlle MOUTOUT (Mme/Ms.), juriste adjointe, Section du droit des marques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Assistant Legal Officer, Trademark Law Section, Law and Legislative Advice Division, Brands and Designs Sector

Matteo GRAGNANI, Section du droit des dessins et modèles et des indications géographiques, Division du droit et des services consultatifs en matière de législation, Secteur des marques et des dessins et modèles/Design and Geographical Indication Law Section, Law and Legislative Advice Division, Brands and Designs Sector

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