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

Fourth Session
Geneva, December 12 to 16, 2011

DRAFT SUMMARY BY THE CHAIR

prepared by the Secretariat

1. The Working Group on the Development of the Lisbon System (Appellations of Origin) (hereinafter referred to as "the Working Group") met in Geneva, from December 12 to 16, 2011.

2. The following Contracting Parties of the Lisbon Union were represented at the session: Costa Rica, Cuba, Czech Republic, France, Georgia, Hungary, Iran (Islamic Republic of), Italy, Mexico, Portugal, Republic of Moldova, Serbia, Slovakia, The former Yugoslav Republic of Macedonia (14).

3. The following States were represented as observers: Australia, Chile, Germany, Indonesia, Malaysia, Peru, Romania, Saudi Arabia, Spain, Sri Lanka, Switzerland, Thailand, Turkey, United States of America, Viet Nam (15).

4. Representatives of the following international intergovernmental organizations (IGOs) took part in the session in an observer capacity: European Union (EU), World Trade Organization (WTO) (2).

5. Representatives of the following international non-governmental organizations (NGOs) took part in the session in an observer capacity: Brazilian Association of Intellectual Property (ABPI), Centre for International Intellectual Property Studies (CEIPI), European Communities Trade Mark Association (ECTA), International Association for the Protection of Intellectual Property (AIPPI), International Trademark Association (INTA), MARQUES (Association of European Trademark Owners), Organization for an International Geographical Indications Network (OriGIn) (7).

6. The list of participants is contained in document LI/WG/DEV/4/INF/1 Prov. 2*.

AGENDA ITEM 1: OPENING OF THE SESSION

7. Mr. Francis Gurry, Director General, opened the session, recalled the mandate of the Working Group and introduced the draft agenda, as contained in document LI/WG/DEV/4/1 Prov.

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

8. Mr. Mihály Ficsor (Hungary) was unanimously elected as Chair of the Working Group, Mr. Hossein Gharibi (Iran (Islamic Republic of)) and Mr. Alberto Monjaras Osorio (Mexico) were elected as Vice-Chairs.

9. Mr. Matthijs Geuze (WIPO) acted as Secretary to the Working Group.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

10. The Working Group adopted the draft agenda (document LI/WG/DEV/4/1 Prov.) without modification.

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE THIRD SESSION OF THE WORKING GROUP

11. The Working Group adopted the Revised Draft Report of the Third Session of the Working Group (document LI/WG/DEV/3/4 Prov.2) without modification.

AGENDA ITEMS 5 AND 6: DRAFT NEW INSTRUMENT CONCERNING THE INTERNATIONAL REGISTRATION OF GEOGRAPHICAL INDICATIONS AND APPELLATIONS OF ORIGIN AND DRAFT REGULATIONS UNDER THE DRAFT NEW INSTRUMENT

12. Discussions were based on documents LI/WG/DEV/4/2, LI/WG/DEV/4/3, LI/WG/DEV/4/4 and LI/WG/DEV/4/5.

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* The final list of participants will be made available as an Annex to the report of the session.

Basis for Protection and Definitions (Articles 2 and 3)

13. The Chair concluded that the Working Group was of the view that Article 3 should be drafted in a less complex manner and should follow more closely the current definition for appellations of origin of the Lisbon Agreement and the definition for geographical indications of the TRIPS Agreement, and thus avoid the negative formulation in Article 3(5)(a) and (b).

14. In addition, the Chair noted that some delegations preferred, in a definition for appellations of origin in the Draft New Instrument, the reference to "natural and human factors", as contained in the definition for appellations of origin of the Lisbon Agreement, while other delegations preferred to refer to "natural and/or human factors". Furthermore, the Chair noted the request from some delegations to better reflect the notion of reputation in that definition.

Scope of Protection (Articles 4 and 9)

15. The Chair concluded that the discussion had confirmed the difficulty of reconciling the desire of a large number of delegations for an international instrument laying down a high and preferably uniform level of protection for both geographical indications and appellations of origin with the objective of the review of the Lisbon system to allow for a much larger membership.

16. In this connection, a suggestion was made for a two-tier approach consisting of a Chapter 1 dealing with a mere registration system along the lines of the Madrid and Hague systems, combined with a Chapter 2 addressing substantive requirements that would provide for a high level of protection for both geographical indications and appellations of origin, on the understanding that contracting parties would be free to opt out from such Chapter 2.

Prior Use (Articles 12, 13, 14 and 18)

17. The Chair noted that some delegations had expressed their preference for bringing the wording of Article 12 closer to traditional trademark terminology. In that context, the Secretariat confirmed that Article 12 would allow contracting parties to provide for the coexistence of a prior trademark and an appellation of origin or a geographical indication. In addition, suggestions were made for removing the last sentence of Article 12 concerning possible agreements between the right holders concerned and for including the sentence in the Notes.

18. The Chair noted the conflicting views on the length of the phasing out period in Article 18.

Other Substantive Provisions (Articles 10, 11 and 15)

19. The Chair noted the concerns expressed by some delegations that in their view the title of Article 10 did not reflect the contents of the provision itself.

20. On the basis of the discussion of Article 15, the Chair concluded that the provision would require an overall revision.

Filing International Applications (Articles 5, 6 and 7 and Rules 5, 6 and 8)

21. The Chair noted the confirmation by the Secretariat that Article 5(3) was optional, and that such provision did not change the rule that the basis for an international registration should be the protection in the country of origin or the contracting party of origin.

22. The Chair also noted the various proposals to align the wording of paragraphs (2) and (3) of Article 5, in the sense that a reference had to be made in both paragraphs either to a legal entity or a federation or association having legal standing to assert rights in a geographical indication or appellation of origin, as well as to represent legitimate users thereof.

Future Work

23. The Chair concluded that a majority of members of the Working Group had expressed the view that the focus of the next session of the Working Group should be the examination and discussion of a revised version of the Draft New Instrument and the related Draft Regulations, as contained in documents LI/WG/DEV/4/2 and LI/WG/DEV/4/3, respectively.

24. Along the same lines, the Chair also noted that a majority of delegations had indicated their preference to work along the lines, and following the structure of, the proposed Draft New Instrument, as they were of the view that it was too premature to take a position regarding a possible two-tier approach.

25. As regards the legal instrument by which the Draft New Instrument and the related Draft Regulations might be formalized, the Chair observed that several delegations would prefer to maintain the Lisbon Agreement in combination with a Protocol to it. Meanwhile, he also noted that some other delegations were not opposed to a revision of the Lisbon Agreement itself.

26. The Chair noted two specific requests expressed by different delegations, namely that the revised Draft New Instrument should still contain a clause on the accession by intergovernmental organizations, and that the text of the revised Draft New Instrument and the related Draft Regulations should be simplified by avoiding an excessive use of cross-references between the various articles and rules.

27. On the basis of the discussions that took place, the Chair concluded that the Working Group had agreed to the following:

(i) the Secretariat would prepare a revised version of the Draft New Instrument and the related Regulations which would also require a re-draft of the articles and rules discussed at the present meeting as well as the necessary consequential amendments to the remaining articles and rules. Moreover, where appropriate, alternative provisions and different options between brackets would be introduced in the revised version;

(ii) the Secretariat would work on the basis of the present Summary by the Chair and also on the basis of the Draft Report of the fourth session of the Working Group to make sure that all contributions are duly reflected in the revised version of the Draft New Instrument and the related Draft Regulations.

AGENDA ITEM 7: OTHERS MATTERS

28. No interventions were made under this item.

AGENDA ITEM 8: SUMMARY BY THE CHAIR

[29. The Working Group approved the Summary by the Chair as contained in the present document.]

30. A draft of the full report of the session of the Working Group will be made available on the WIPO website for comments by the delegations and representatives that participated in the meeting. Any such comments can be submitted within two months from its publication date, after which the draft report will be amended, as required, and made available to delegations on the WIPO website, for its formal adoption in due course.

AGENDA ITEM 9: CLOSING OF THE SESSION

31. The Chair closed the session on December 16, 2011.

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