



**MODEL LAW FOR
DEVELOPING COUNTRIES
ON APPELLATIONS OF
ORIGIN AND INDICATIONS
OF SOURCE**



WORLD INTELLECTUAL PROPERTY ORGANIZATION
(WIPO)

**MODEL LAW
FOR DEVELOPING COUNTRIES
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AND INDICATIONS OF SOURCE**

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During the last ten years, the United International Bureaux for the Protection of Intellectual Property (BIRPI) and, since 1970, its successor, the World Intellectual Property Organization (WIPO), have prepared and published three model laws, for the benefit of developing countries, in different fields of industrial property. This work was carried out as part of the program of legal-technical assistance to developing countries which is one of the predominant tasks of WIPO.

The three previous model laws deal respectively with (i) inventions, (ii) marks, trade names and unfair competition, and (iii) industrial designs. The subject of the present model law is appellations of origin and indications of source.

Appellations of origin and indications of source, which are applied to goods of all kinds--natural and agricultural products and products of handicraft and industry--, are of considerable advantage to developing countries if they are given adequate protection. They then substantially contribute to the reputation of the products for which they are used and are thus a far from insignificant factor in the development of the economies and the promotion of the exports of such countries.

Like its predecessors, this model law was prepared with the aid of a committee of experts from developing countries. It is hoped that it will make a useful contribution to the economic development of those countries.

ARPAD BOGSCH
Director General of WIPO

Geneva, January 1975

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HISTORY OF THE MODEL LAW

HISTORY OF THE MODEL LAW

In 1964, the United International Bureaux for the Protection of Intellectual Property (BIRPI), which performed the functions now carried out by the World Intellectual Property Organization (WIPO), prepared the draft of a model law for developing countries on inventions (patents and protection of technical know-how). After detailed discussions by a committee of experts from developing countries, the draft was revised and published in 1965. The same procedure was followed when BIRPI, and later WIPO, prepared two other model laws for developing countries - one on marks, trade names, and acts of unfair competition, published in 1967, and the other on industrial designs, published in 1970.

During the exchanges of views when these model laws were being prepared, developing countries showed a considerable interest in the adoption of legislation, or the modernization of existing legislation, not only in the field of patents, marks and industrial designs, but also in that of appellations of origin. A proposal by BIRPI, and later WIPO, to prepare a model law on this subject was thus noted with satisfaction by the committees of experts referred to. The proposal was approved by the General Assembly of WIPO in September 1970.

WIPO therefore prepared the draft of a fourth model law, accompanied by a commentary, on appellations of origin and indications of source. These two texts¹, together with an invitation to be represented on a committee of experts, were sent in 1972 to the governments of 90 States which were considered, in accordance with the established practice of the United Nations General Assembly, to be developing countries and were likely to be interested in such a model law².

¹ Document PJ/91/2.

² These countries were:

Asia: Afghanistan, Bahrain, Bangladesh, Bhutan, Burma, Democratic Yemen, India, Indonesia, Iran, Iraq, Jordan, Khmer Republic, Kuwait, Laos, Lebanon, Malaysia, Maldives, Mongolia, Nepal, Oman, Pakistan, Philippines, Qatar, Republic of Korea, Republic of Viet-Nam, Saudi Arabia, Singapore, Sri Lanka, Syrian Arab Republic, Thailand, United Arab Emirates, Yemen.

Africa: Algeria, Botswana, Burundi, Egypt, Equatorial Guinea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Libyan Arab Republic, Malawi, Mali, Morocco, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Swaziland, Tunisia, Uganda, United Republic of Tanzania, Zaire, Zambia.

America: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay, Venezuela.

Other countries: Cyprus, Fiji, Malta, Mauritius, Nauru, Tonga, Western Samoa.

The member States of the African and Malagasy Industrial Property Office (OAMPI) do not appear on this list as they had already adopted a uniform law on the protection of appellations of origin. The draft model law was submitted to OAMPI itself.

In addition, the United Nations, other intergovernmental organizations and international non-governmental organizations received an invitation to be represented on the committee of experts by observers. A copy of the draft model law and the commentary was sent at the same time. The two texts were also transmitted for possible observations, to the governments of the member States of the International Union for the Protection of Industrial Property (Paris Union) other than the countries mentioned above.

The committee of experts convened by WIPO, hereinafter referred to as the "Fourth Model Law Committee" in order to distinguish it from the committees which advised on the three earlier model laws, met in Geneva at the headquarters of WIPO in April 1973. It consisted of experts from the following 18 developing countries: Algeria, Argentina, Brazil, Chile, Colombia, Costa Rica, Cuba, Egypt, India, Liberia, Libyan Arab Republic, Mali, Morocco, Nigeria, Philippines, Sri Lanka, Syrian Arab Republic, Thailand. The African and Malagasy Industrial Property Office (OAMPI) was represented by an expert and a number of international organizations by observers, who took an active part in the discussions.

The list of participants appears on page 91.

The Fourth Model Law Committee examined the draft model law, section by section. It gave its opinion on the draft and indicated changes which could usefully be made to the text of the model law and to the commentary.

Throughout the discussions, it was emphasized that the Fourth Model Law Committee was studying a draft model law and not the draft of a uniform law. It was frequently stated that any country wishing to have a new law on appellations of origin and indications of source was entirely free to decide whether or not to follow the model law and that it would be normal for it to adapt some of the model law's provisions to its own special needs, traditions and legal system.

At its final session, on April 11, 1973, the Fourth Model Law Committee adopted the following recommendation:

"The Committee of Experts on a Model Law for Developing Countries on Appellations of Origin and Indications of Source, convened by the World Intellectual Property Organization (WIPO) and composed exclusively of representatives of governments of developing countries,

"Meeting at Geneva from April 9 to 11, 1973,

"After having examined, together with the observers of an intergovernmental organization and international non-governmental organizations, the draft model law and the commentary accompanying it (document PJ/91/2), prepared by WIPO and communicated to governments and invited organizations,

"Expresses the view that the draft as a whole reflects the special needs of developing countries and represents a useful model for legislation in these countries;

"Recommends that the model law and the commentary, as revised on the basis of the discussions of the Committee, be transmitted to the governments of developing countries, to the governments of the States members of the International Union for the Protection of Industrial Property (if not already falling into the preceding category), to the Secretary-General of the United Nations, and to the other international organizations invited to the meeting;

"Recommends further that WIPO should continue to keep in touch with the governments of developing countries and with all international organizations, conferences or other bodies which deal with the problems of developing countries, and to offer them its assistance in connection with the adaptation or adoption of legislation

in the field of appellations of origin and indications of source and, more generally, in the evaluation of the role that industrial property and its protection play in the fostering of commerce and industry in developing countries;

"Notes with satisfaction that WIPO intends to keep under periodic revision the Model Laws for Developing Countries which it has already published, so as to further adapt them to the needs of those countries and to the evolving international situation in the field of industrial property;

"Recommends that developing countries consider the possibility of acceding to those international conventions on industrial property to which they are not yet party, especially the Paris Convention for the Protection of Industrial Property, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration."

WIPO has implemented the fifth paragraph of this recommendation and is ready to carry out the sixth, in that it is at the disposal of the governments of developing countries and of international organizations, for all the purposes mentioned in that paragraph. As to the final paragraph of the recommendation, WIPO hopes that it will be implemented by the countries to which it is addressed and looks forward to the establishment of permanent and fruitful relations with those countries.

**TEXT AND COMMENTARY
OF THE MODEL LAW**

TEXT AND COMMENTARY
OF THE MODEL LAW FOR DEVELOPING COUNTRIES
ON APPELLATIONS OF ORIGIN AND INDICATIONS OF SOURCE

GUIDING PRINCIPLES OF THE MODEL LAW

The protection of appellations of origin and indications of source plays an important role in commercial relations both at the national and at the international level. The wrongful use of appellations of origin or indications of source is contrary to honest practices in industry and trade. It can be misleading for purchasers of the goods for which the appellation or indication is used: persons buying the goods in the erroneous belief that they originate from the indicated source may suffer damage - sometimes serious damage where the stated source has a special reputation for the goods concerned. In addition the person wrongfully using the appellation or indication gains an unfair advantage over his competitors, who may lose the whole or part of their custom. In this context, the protection of appellations of origin and indications of source can therefore be considered as a particular aspect of the protection against unfair competition. Some provisions on the protection of appellations of origin and indications of source are thus to be found in the Second Model Law, dealing with marks, trade names and acts of unfair competition¹. However, the rules relating to appellations of origin and indications of source in the Second Model Law provide only for the necessary minimum of protection. More detailed provisions are required for an effective protection; this is particularly true in the case of appellations of origin, for which special rules to reinforce their protection would seem desirable.

Appellations of origin and indications of source are of considerable importance for developing countries. They are applied to natural and agricultural products and to the products of handicraft and industry, such as wood, sugar, fruit, wine, coffee, tea, tobacco, and textile goods, especially carpets. An appellation of origin or an indication of source contributes to the reputation of the product concerned and creates "goodwill" among consumers, which will assist the product's distribution and sale. The consumers of goods exported from developing countries are often those of the industrialized countries. It is therefore important that the appellations of origin and indications of source of the developing countries are protected in the industrialized countries. But such protection will, in very many cases, only be afforded where the appellation or indication is protected in the exporting country itself. Since most developing countries do not yet have provisions on the protection of appellations of origin and indications of source, it is in their interest to provide for and regulate such protection as soon as possible. They will thus prevent the reputation of their products from being diminished by the wrongful use of the corresponding appellations and, at the same time, they will promote their exports. The organization of a system of protection will require a large amount of work at the initial stage, since there is first a law to be prepared and then measures will have to be taken to ensure that the most important appellations of origin are protected as soon as possible after the law enters into force. After that stage however, the task will tend to become lighter since all that will have to be done is to add a few other appellations to the number of those protected. In the case of indications of source, the process will be still more rapid as the only step that needs to be taken to ensure their protection is the preparation of the law.

¹ See Sections 50, 51, 53 and 54 of the Second Model Law.

The model law on appellations of origin and indications of source differs from the three preceding model laws in a number of important respects. The main difference resides in the fact that the three earlier model laws essentially regulate the acquisition of exclusive rights in an invention, mark or design, on one hand, and the protection of those exclusive rights against unlawful use by third parties, on the other; the model law on appellations of origin and indications of source is concerned not with the protection of an exclusive right but with the protection of the privileged position enjoyed by persons who carry on their professional activity in the geographical area covered by the appellation or indication. Because of this special feature, this model law contains a number of provisions which are not to be found in the three earlier model laws. However, other provisions have counterparts in the earlier model laws; in such cases, the earlier wording has been closely followed to prevent incorrect inferences being drawn from differences in wording.

As in the case of the three other model laws, the model law on appellations of origin and indications of source constitutes an integral whole. This means that the modification of one provision will in most cases require corresponding modifications in other provisions. (Example: the law uniformly provides for time limits of three months. If one of these time limits is changed, it may be necessary for the other time limits to be similarly changed.)

A law cannot however regulate the subject exhaustively. Each State will have to establish complementary rules which will, among other things, prescribe the details of administrative formalities and payment of fees.

Moreover, countries wishing to adopt the model law will have to adapt its provisions, where necessary, to the special characteristics of their own legal systems. Such an adaptation may require not only important changes of a substantive nature but also major changes in terminology. A country may wish to have other terms than those used in the model law if they do not fit in with its legal terminology. In this connection, WIPO is ready to assist developing countries in this task by, for example, studying the effect that a terminological change to one section will have on other provisions of the model law.

The model law has taken into account the conventions and international agreements on the subject, namely the Paris Convention for the Protection of Industrial Property, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. With regard to the Lisbon Agreement, the question of a revision is now under discussion. The model law is compatible with the present text of the Agreement, but has also taken account of possible modifications.

STRUCTURE OF THE MODEL LAW

The model law has five parts, which deal with the following subjects:

Part I (Sections 1 to 3) comprises the general provisions, which contain some definitions, provide for the applicability of international conventions and regulate the position of foreigners in the absence of an international convention.

Part II (Sections 4 to 16) deals with appellations of origin. This is the longest part of the model law and sets out, in four chapters, the special rules governing appellations of origin.

Chapter I (Sections 4 and 5) defines the requirements for protection --the formal requirements (registration) and the substantive requirements (exclusion from protection).

Chapter II (Sections 6 to 12) relates to the registration procedure for appellations of origin.

Chapter III (Section 13) institutes a court procedure for the cancellation or rectification of a registration of an appellation of origin.

Chapter IV (Sections 14 to 16) defines who may use a registered appellation of origin and sets out the civil and penal sanctions against unlawful use.

Part III (Section 17) governs the protection of indications of source. Since they are protected without any registration, one general provision is sufficient to establish their protection.

Part IV (Sections 18 and 19) relates to the competence of the courts and the rules for the application of the model law.

Part V (Section 20) concerns entry into force of the law and contains transitional provisions.

The model law is followed by an Annex, which sets out two further alternatives for regulating the protection of appellations of origin. Whereas the protection under the model law itself is based on registration, an Alternative A provides for protection on the basis of individual legislation (special orders), and an Alternative B provides for a combination of the registration system with the system of special orders.

COMMENTARY ON PART I

The general provisions of the model law set out a number of definitions, provide for the application of international conventions and regulate the position of foreigners in the absence of an international convention.

Commentary on Section 1

This Section defines the concepts occurring most frequently in the model law.

The first definition (paragraph (a)) relates to the term "appellation of origin." It is very similar to the definition in Article 2(1) of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

The first element in the definition is the geographical area to which an appellation of origin can apply. It may be a country or a region or simply a place. These terms are to be understood in a wide sense, covering any specific geographical area, in particular the official subdivisions of a country. The word "place" has been used instead of "locality," which appears in the Lisbon Agreement, but this does not affect the general sense of the provision. The word "place" is more appropriate since its scope is wider and more indefinite. It can, for example, cover a town district, a suburb or even an uninhabited area which is identified on a map.

The second element in the definition of appellation of origin relates to the link between the characteristic qualities of the product and the geographical area covered by the appellation. The words "characteristic qualities" have been used instead of "quality and characteristics." The Fourth Model Law Committee felt that the latter expression, used in the Lisbon Agreement, was less precise, but this change is of a purely drafting nature. The link between the characteristic qualities of the product and the geographical area covered by the appellation may arise from natural factors, such as the soil or the climate, or from human factors, such as the special professional traditions of the people who have come to live in that area. The connection may also arise from a combination of these two factors. In order to make it clear that it is not necessary for there to be both natural and human factors involved, the Fourth Model Law Committee was in favor of the present wording, which differs from the slightly ambiguous formulation in the Lisbon Agreement.

The third element in the definition covers the name itself. This will normally be a geographical name in its strict sense - the name used on maps. In addition to geographical names in the strict sense, the model law (last sentence of paragraph (a)) recognizes names that have acquired a geographical sense in relation to certain products, either by use or by decision of the administrative authorities. (Example: "xtabentún," which is a Mexican drink made in the Yucatan peninsula; but the name does not correspond to any region or place.) With respect to the Lisbon Agreement, this wide interpretation of the concept of appellation of origin was accepted by the Council set up under the Agreement at its fifth session in September 1970 (see document AO/V/8, paragraph 19).

PART I: GENERAL PROVISIONS

Section 1: Definitions

For the purposes of this Law:

(a) "appellation of origin" means the geographical name of a country, region or specific place which serves to designate a product originating therein the characteristic qualities of which are due exclusively or essentially to the geographical environment, including natural factors, human factors, or both natural and human factors; any name which is not that of a country, region or specific place is also considered a geographical name if it relates to a specific geographical area when used in connection with certain products;

(b) "indication of source" means any expression or sign used to indicate that a product or service originates in a country, a region or a specific place;

(c) "product" means any natural or agricultural product or any product of handicraft or industry;

At the same session, the Council set up under the Lisbon Agreement accepted that there was nothing to prevent geographical names from being accompanied by the name of the product concerned or a qualifying word relating to that product, on the clear understanding that protection would not extend either to the name of the product itself or to the qualifying word itself (see document AO/V/8, paragraph 18). The Fourth Model Law Committee also accepted this principle, but it was not thought necessary to include it in the model law itself.

The second definition in Section 1 relates to "indication of source" (paragraph (b)). The definition of indication of source is wider than that of appellation of origin, in that it does not require the characteristic qualities of the product to be due to the geographical environment. It is sufficient that the product originates in a given geographical area. The words "expression or sign" have a very wide meaning, covering anything that is perceptible. The Fourth Model Law Committee felt that the definition of indication of source should not include, as had been the case in the draft model law, expressions covering a group of countries (South American wines, for example).

The third definition in Section 1 relates to "product" (paragraph (c)). This has been given a wide meaning in the model law so as to cover all products--natural and agricultural products and products of handicraft and industry. This is particularly important in the case of appellations of origin, in the context of the requirement that the characteristic qualities of the product must be due exclusively or essentially to the geographical environment. It may well be that a geographical environment consists solely of human factors (Section 1(a)); in such a case, where a special mode of manufacturing a product is linked by professional traditions to a given geographical area, this is sufficient to qualify for an appellation of origin within the meaning of the model law. Thus an appellation of origin can be used for products of handicraft or industry, even when they are produced from raw materials coming from outside the geographical area concerned.

"Natural product" means a product which has not undergone any transformation, such as stone or mineral water.

"Product of handicraft" covers not only products or works of handicraft but also works of art.

The fourth definition in Section 1 relates to the term "producer" (paragraph (d)). This definition follows from the wide concept of "product," since it covers any person producing agricultural products or exploiting other natural products and any manufacturer of products of handicraft or industry, as well as any trader dealing in those products.

The fifth definition in Section 1 relates to the term "application" (paragraph (e)), which is frequently used in the second part of the model law and means an application for registration of an appellation of origin.

The last definition in Section 1 relates to the term "Office" (paragraph (f)). Each country adopting the model law will have to designate the authority responsible for administering the law. The functions to be performed by the Office under the law can of course, if this is desired, be entrusted to an existing authority - the Industrial Property Office or one of its divisions, for example.

(d) "producer" means:

(i) any producer of agricultural products or any other person exploiting natural products,

(ii) any manufacturer of products of handicraft, or industry, and

(iii) any trader dealing in the said products;

(e) "application" means an application for registration of an appellation of origin;

(f) "Office" means the authority responsible for administering this Law.

Commentary on Section 2

This Section deals with the application of international conventions, in the country adopting the model law, to its own nationals and to persons assimilated to them, as well as to nationals of the other States parties to the conventions and to persons assimilated to such nationals.

As to the suitability of this Section for the various legal systems, countries may be divided into two groups.

Countries belonging to one of these groups have Constitutions or constitutional systems which permit their administrative and judicial authorities to apply to the interested parties the provisions of international conventions, drafted in a way which makes such direct application possible ("self-executing provisions"). In some countries, this system of direct applicability is provided for by the Constitution; in others, a convention is only directly applicable if a law expressly so provides.

Countries belonging to the other of these two groups do not have such a system of direct applicability. In these countries, the provisions of an international convention bind only the State and, in order to become applicable to private parties, they must be reproduced in a domestic law.

The Section under consideration, which is identical with Section 6 of the Model Law on Inventions, Section 2 of the Model Law on Marks, Trade Names and Acts of Unfair Competition and Section 5 of the Model Law on Industrial Designs, was inserted for the use of countries belonging to the first group.

The effect of the Section, in these countries, is that all provisions of international conventions dealing with industrial property to which the country is a party, whether these conventions are bilateral or multilateral - and, among the latter, particularly the 1883 Paris Convention for the Protection of Industrial Property - will become applicable in that country without the need for any additional measures. In respect of the Paris Convention, this means that persons eligible for protection under that Convention (see Articles 2 and 3) will have the right to invoke, within these countries, all provisions of the Convention which are directly applicable (self-executing) on the basis of Section 2 of the model law.

Another effect of Section 2, in respect of these countries, consists in the fact that even their own nationals, and persons assimilated to them, will be able to invoke the self-executing provisions of a convention, and especially those of the Paris Convention.

In the case of those countries in the first group whose Constitutions already provide for direct applicability of conventions also to their own nationals, adoption of the Section under consideration is unnecessary, since the effects referred to in the preceding paragraphs are already produced by the national Constitutions themselves.

On the other hand, for the countries in the second group, the Section under consideration is without interest and can be omitted since their Constitutions exclude direct applicability of international conventions. These countries would have to reproduce the relevant provisions of the convention in the law under consideration, or in an annex, and declare their applicability on the domestic level.

Section 2: Applicability of International Conventions

The relevant provisions of international bilateral or multilateral conventions to which [the country] is or will become a party, which regulate the rights of nationals of States parties to such conventions and of persons assimilated to such nationals, may be invoked by virtue of this Law.

Commentary on Section 3

This Section, which deals with the position of foreigners who are not protected by any convention, gave rise to a detailed discussion in the Fourth Model Law Committee.

In the draft model law Section 3, which was similar to Section 3 of the Model Law on Marks, Trade Names and Acts of Unfair Competition, provided that foreigners who were not protected by any convention would have the same rights under the model law as nationals.

According to one opinion expressed in the Fourth Model Law Committee, it might be dangerous to give foreigners the same rights as nationals because it was thought that foreign producers might abuse their position in such a way as to injure the interests of the developing country concerned. It was therefore proposed that the right to apply for registration of national appellations of origin under Section 6 and the right to use registered appellations of origin under Section 14 should be restricted to nationals of the country concerned and that Section 3 should be drafted in such a way as to take account of this restriction. It was also pointed out that the interests of the small producers in a country could be adversely affected by the kind of monopoly which might gradually be acquired by a foreign or multinational enterprise and that the model law should not enable such a situation to arise.

At the same time it was remarked that every country was free to allow or refuse to allow foreign persons or companies to carry on an activity on its territory and that such a decision was a question of economic policy which should be resolved in a more general context than that of the law on appellations of origin. It was then pointed out that, if a foreigner was given permission to carry on his activity in the country and produced goods conforming to the standards of the appellation of origin, there was no reason for depriving him of the right to use it, if only because of the fact that it would be difficult for the consumers to distinguish between goods produced by foreigners and those produced by nationals, since the right to the appellation was linked to the product's characteristic qualities arising from the area in which it was produced and not to the nationality of the producer. Several experts pointed out that the absence of any discrimination as between nationals and foreigners did not in itself detract from the principle of national sovereignty inasmuch as the admission of foreign investments was also an act of sovereignty; moreover, if a foreign enterprise produced goods with the authorization of the government and to its satisfaction, far from being prejudiced the interests of the country would be served. Finally, it was stated that any discrimination as between nationals and foreigners would undermine the work being done by a number of developing countries to promote investments between them or to integrate their economies.

In this context, it should be noted that any discrimination with respect to foreigners is contrary to the principle of national treatment, which is the fundamental rule of the 1883 Paris Convention for the Protection of Industrial Property. It follows that any exception to this principle could apply only to foreigners not covered by Section 2 of the model law. The question has therefore to be regulated in the context of Section 3, dealing with the position of foreigners in the absence of an international convention.

In view of the different opinions expressed by the experts, the Fourth Model Law Committee felt that the best solution was that Section 3 should include a provision, placed inside brackets, preventing foreigners who were not protected by any convention from applying for registration of an appellation of origin under Section 6. Countries wishing to adopt the model law will thus have a choice between two possible solutions.

Section 3: Position of Foreigners in Absence
of International Convention

Foreigners who do not fall within the scope of the preceding Section shall have the same rights under this Law as nationals: [-with the exception of the right to file applications for registration of an appellation of origin under Section 6, this right being reserved to nationals].

The only effect of the provision inside brackets is to prevent foreigners who do not fall within the scope of Section 2 from applying for registration of an appellation of origin. They are not prevented, provided that the requirements of Section 14 are met, from using a registered appellation of origin. In addition, the provision relates only to appellations of origin: no discrimination as between nationals and foreigners is possible in the field of indications of source.

Countries wishing to retain the provision inside brackets can make it more flexible by providing that it is to apply only to nationals of countries which do not grant sufficient reciprocity.

COMMENTARY ON PART II

The second part of the model law sets up a special system for the protection of appellations of origin. The system is characterized by the establishment of a register to be kept by the Office and the rule that appellations of origin must be registered if they are to be protected as such.

This part has four chapters. Chapter I sets out the requirements for the protection of appellations of origin. Chapter II regulates the registration procedure. Chapter III relates to the cancellation and rectification of registrations. Chapter IV deals with the right to use appellations of origin and with the sanctions for unlawful use.

COMMENTARY ON CHAPTER I

The two sections of this Chapter (Sections 4 and 5) set out the requirements for protection. The fulfillment of these requirements will be verified not only by the Office but also by the courts. Appellations of origin which do not, or no longer, fulfill these requirements will therefore be ineligible for protection as such.

Commentary on Section 4

Subsection (1) states the principle that only appellations of origin which have been--or are to be treated by virtue of an international convention as having been--registered by the Office enjoy the protection provided by Chapter IV of Part II. The reference to appellations that are to be treated as having been registered is directed in particular at the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. This means that where an appellation of origin is the subject of an international registration under the Lisbon Agreement it will, by virtue of Chapter IV, be protected in the countries which have adopted the model law and are at the same time parties to the Lisbon Agreement; it will not have to undergo a further registration at the national level.

Subsection (2) deals with foreign appellations of origin. The Fourth Model Law Committee discussed whether these should be eligible for registration by the Office. A problem arises here due to the fact that applications for registration of an appellation of origin must contain a precise statement of the geographical area to which the appellation applies and of the characteristic qualities of the products concerned;

PART II: APPELLATIONS OF ORIGIN

CHAPTER I: REQUIREMENTS FOR PROTECTION

Section 4: Registration

(1) Appellations of origin shall be protected as such only if they have been--or are to be treated by virtue of an international convention as having been--registered by the Office.

(2) Foreign appellations of origin may be registered by the Office only where an international convention or a law applying such a convention so provides.

furthermore, the accuracy of this statement is to be checked by the Office (see Section 9). Where the products concerned originate abroad, it will be extremely difficult for the Office to carry out this examination, particularly as far as the delimitation of the geographical area is concerned. It is thus hardly possible to treat foreign appellations in the same way as national appellations.

The simplest solution is to allow foreign appellations to be registered only in the context of an international convention, as is provided for in subsection (2). The requirements for protection will then be determined by the relevant convention, the Lisbon Agreement for instance, and by the law applying the convention.

The Fourth Model Law Committee also considered another solution: to allow foreign appellations to be registered, even independently of any international convention, on the basis of a certificate issued by the competent authority of the country in which the appellation originated. If this solution were adopted, two separate registers at the Office might be provided for. The first would contain national appellations, which would be registered after they had undergone the examination provided for by the model law. The second register would be for foreign appellations, which would be subject to a different procedure. Applications for the registration of a foreign application could be filed by the producers (as defined in Section 1(d)) or groups of producers carrying on their activity in the geographical area specified in the application and with respect to the products specified in the application. They could also be filed by consumer groups in the country in which registration is sought or by any competent authority in that country. The certificate established by the competent authority of the country of origin would have to be attached to the application. The certificate would contain all the particulars required under Section 7(1)(b) to (e), so that the examination under Section 10(1)(b) to (d) would no longer be necessary. The adoption of such a system of protection for foreign appellations would entail a number of amendments to the existing text of the model law. Subsection (2) of Section 4 would be deleted and subsection (3) would become subsection (2). Chapter II would have to be amended so as to be brought into line with the new system; alternatively, it could be left as it is, with its title being changed to "Registration Procedure for National Appellations of Origin"; it would then be followed by a new chapter, "Registration Procedure for Foreign Appellations of Origin," which would provide for the system described above.

This solution was not incorporated in the model law, even as an alternative, because it gives rise to very serious difficulties, particularly in the case of the examination as to substance (see Section 10(1)). For example, should the Office carry out an examination for conformity with Section 5? This is a delicate question since, in the context of many international conventions, solutions have been adopted under which no country other than the country of origin has power to decide whether an appellation of origin has become a generic name (see Article 6 of the Lisbon Agreement and, in the case of products of the vine, Article 4 of the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods). Difficult problems also arise with respect to the possibility of opposing a registration (see Section 10(4)). For example, could an interested person resident in the country where protection is sought make objections to statements contained in the certificate issued by the competent authority of the country of origin? In addition, the system under discussion might have adverse consequences for developing countries. If country A adopted the system but country B decided to protect foreign appellations only on the basis of an international convention, A would be bound to protect B's appellations although its own appellations would not be protected in B. In other words, reciprocity may be lacking. The best way for a country to ensure reciprocity is to be a party to an international convention, such as the Lisbon Agreement. This is why the model law, in Section 4(2), provides for the protection of foreign appellations only on the basis of an international convention.

(3) Appellations of origin that are not registered-- or to be treated as registered by virtue of an international convention--shall be protected as indications of source.

One of the experts in the Fourth Model Law Committee suggested another system, under which foreign appellations would be protected on the principle of reciprocity whether or not there was any international convention. This idea was not adopted since it does not resolve the problem of how an application for registration could be checked with respect to the particulars relating to the country from which the appellation emanates.

Subsection (3) provides that where an appellation of origin has not been registered by the Office and is not to be treated as a registered appellation by virtue of an international convention, it is to be protected as an indication of source. Of course, registered appellations can also rely, as a subsidiary means of protection, upon their character as indications of source.

Commentary on Section 5

By excluding three categories of appellations from protection, this Section is in effect laying down three substantive requirements for the protection of appellations of origin.

Under the first requirement (paragraph (a)), the appellation concerned must correspond to the definition in Section 1(a) if it is to be protected as such. This means in particular that only names can be considered appellations of origin and not, for example, emblems or pictures. These can however be protected as indications of source.

Under the second requirement (paragraph (B)) the appellation must not be contrary to morality or public order and must not be liable to deceive the public. This provision is similar to Section 5(1)(e) of the Model Law on Marks, Trade Names and Acts of Unfair Competition; it was inserted at the request of the Fourth Model Law Committee.

The third requirement (paragraph (c)) relates to the meaning of "name." A name which was originally understood in an exclusively geographical sense may, through general and continuous use, become a generic term--that is, a term which is currently used to denote a certain product in the same way as an ordinary noun. "Camembert," for instance, is the name of the village in Normandy from where the well-known cheese comes, but it is used today to describe the particular kind of cheese.

In this context however, the question whether a particular name is or is not generic is of great importance. Who decides whether a name has become a generic term? The model law sets out two concurrent conditions: for a name not to be--or no longer to be--protectable as an appellation of origin, it must be generally considered as a generic name, both by experts and by the general public. The word "generally" does not mean that all the experts and the whole of the public must be in agreement: it is enough that the number of experts or members of the public who do not share the general opinion represents an insignificant minority. In cases of doubt, the general opinion could be determined by an opinion poll.

The Fourth Model Law Committee felt, however, that paragraph (c) should be placed inside brackets. It will thus be omitted by countries wishing to give greater protection to appellations of origin by not providing for any adverse consequences when an appellation becomes a generic name.

Section 5: Exclusion from Protection

The following shall not be protected as appellations of origin:

(a) appellations which do not correspond to the definition in Section 1(a);

(b) appellations which are contrary to morality or public order and those which, in particular, are liable to deceive the public as to the nature, the source, the manufacturing process, the characteristic qualities, or the suitability for their purpose, of the goods concerned;

[(c) appellations which are generic names of products, a name being understood as generic from the time when it is generally considered as such by experts on the subject and by the general public].

COMMENTARY ON CHAPTER II

This Chapter contains the provisions governing the registration procedure (Sections 6 to 12). It is to some extent similar to Chapter II of Part II of the Model Law on Marks, Trade Names and Acts of Unfair Competition. Appellations of origin however, due to their particular characteristics, require a number of special provisions.

Commentary on Section 6

Since there are no exclusive rights in an appellation of origin, its registration will not lead to the same protection as that accorded to patents, marks and industrial designs. Registration rather creates a situation affecting the legality of certain acts of competition. However, while there is no owner of exclusive rights, there are persons interested in the registration. First, there are those who carry on a professional activity in the geographical area concerned with respect to the products covered by the appellation of origin. For this reason, the model law has given these persons, as well as groups formed by such persons, the right to apply for registration of an appellation of origin (paragraph (a)). The ideas of "geographical area specified in the application" and "products specified in the application" are explained in more detail in the commentary on Section 7(1)(c) and (d).

At the same time, the registration of appellations of origin is also in the interest of the consumers since the use of appellations helps them to choose between competing products. This has been taken into account by the model law, which allows groups of consumers to apply for registration of an appellation of origin (paragraph (b)).

The term "groups" (paragraphs (a) and (b)) has been preferred to more precise terms ("associations," for example), so as not to enter into questions of the legal status of such bodies, which may vary from country to country. The right to apply for registration should however be accorded only to groups which have a certain stability.

Furthermore, since registration of an appellation of origin may be in the general interest as a weapon against certain kinds of fraud, any competent authority in the country where the law is in force should be able to apply for registration of the appellations (paragraph (c)). The country will have to designate the competent authority (or authorities), which will normally be an official body (the department of the Public Prosecutor or Attorney General, for example, or even the Office) or perhaps also a semi-official body (such as a Chamber of Commerce).

CHAPTER II: REGISTRATION PROCEDURE

Section 6: Right to File Application

The following shall have the right to file an application with the Office:

- (a) natural persons or legal entities carrying on an activity as a producer in the geographical area specified in the application, with respect to the products specified in the application, as well as groups of such persons;
- (b) groups of consumers;
- (c) any competent authority.

Commentary on Section 7

Subsection (1) sets out the particulars to be included in an application.

The particulars required under paragraph (a) relate to the applicant, who must first of all give his name and address. The Fourth Model Law Committee felt that the applicant's nationality should also be stated, even in the case of a legal entity. The Committee also considered that the applicant should declare the capacity in which he was applying for registration - whether he (or it) was doing so as a producer or group of producers, as a group of consumers or as a competent authority (see Section 6).

Under paragraph (b) the application must specify the appellation for which registration is sought.

Paragraph (c) is of great practical importance: the geographical area must be properly defined so that there can be no doubt as to the persons entitled to use the appellation.

The products to which the appellation applies (paragraph (d)) are those defined in Section 1(a): only products whose characteristic qualities are due exclusively or essentially to the geographical environment may be mentioned in the registration. In this context, a special problem arises in the case of products which undergo a transformation before being sold to the consumer, tobacco for example. Some regions are famous not only for the tobacco they produce but also for the cigars which are manufactured there. In such cases, the name of the region should preferably be registered as an appellation of origin not only for the tobacco but also for the cigars. Cigar manufacturers established in other regions who use the tobacco originating in the famous region will, of course, always be able to state the source in their publicity, but if the registered appellation covers the cigars, they will not be able to use the appellation in connection with their cigars, even with additions such as "type" or "kind." In other cases, the characteristic qualities may be due to the way in which a finished product is made and not to the raw material from which it was manufactured. If this is the case, the appellation has no connection with the raw material but solely relates to the finished product. It is thus important to know whether the products specified in an appellation are raw materials, semi-finished products or finished products.

The Fourth Model Law Committee was of the opinion that an existing nomenclature in the country should preferably be used to designate the products, such as the list of goods used by the Customs authorities.

The indication of the essential characteristic qualities of the products for which the appellation is used (paragraph (e)) serves to establish the criteria for the minimum quality which must be observed by producers using the appellation. This indication is important for the purposes of Section 14 (see commentary on that Section). However, it will sometimes be difficult or even impossible to specify the qualities of a product. This is why the words "where feasible" appear in paragraph (e). Also, only the essential qualities of a product are to be specified in the application. An exhaustive list is therefore unnecessary.

Subsection (2) provides that the details of the requirements relating to the contents of applications will be fixed by the Rules.

Section 7: Contents of Application

(1) The application shall specify:

(a) the name, address and nationality of the natural person or legal entity filing the application, and the capacity in which the applicant is applying for registration;

(b) the appellation for which registration is sought;

(c) the geographical area to which the appellation applies;

(d) the products for which the appellation is used, in terms sufficiently precise to show, in particular, whether the products are raw materials, semi-finished products or finished products;

(e) where feasible, the essential characteristic qualities of the products for which the appellation is used.

(2) The details of the application of this Section shall be fixed by the Rules.

Commentary on Section 8

This Section enables the Rules to provide for the payment of fees for applications for registration and to set up a system for the collection of such fees. Unlike the preceding model laws, this model law does not require the payment of fees since the applicant does not become the owner of the registration. The purpose of the registration is to protect, on one hand, the interests of a community--the people carrying on their profession in the geographical area concerned--and, on the other hand, the general interest to prevent the deception of the public with respect to the origin of the products put on the market.

The Fourth Model Law Committee felt that the Rules could provide not only for an application fee but also for a fee for the registration of an appellation of origin, the latter being charged only if the application was accepted.

If the Rules do provide for an application and registration fee, it will have to be decided whether an exception should be made in favor of applications filed by a competent authority; such applications are in the general interest, and usually the payment will only mean a transfer from one State treasury to another. The position may of course be different where the competent authority is a semi-official body (see commentary to Section 6(c)).

Commentary on Section 9

Subsection (1) of this Section provides that the Office is to examine whether the applicant has the right in accordance with Section 6 to apply for registration, whether the application contains the particulars required under Section 7, and whether the prescribed fees, if any, have been paid. The Office's examination of the content of an application is solely concerned with form: all the Office does is to verify whether the application in fact contains the particulars required by Section 7. In the context of this Section, the Office does not examine whether the omission of a product's essential characteristic qualities is or is not justified: such an examination will be made only in the context of Section 10(1)(d).

Under subsection (2), the Office must reject applications filed by persons not entitled to do so. This will be the case, for example, where a producer who carries on his activity in region B files an application for registration of an appellation relating to region A. In such a case, the applicant is not permitted to remedy the defect. In addition, a producer applying for registration may be asked to prove that his professional activity is carried on in the geographical area specified in the application and relates to the products specified in the application; he can do this, for example, by producing a certificate established by his local authority.

The Fourth Model Law Committee considered whether subsection (2) was in fact necessary: if the applicant is not entitled, his application must in any event be rejected. It felt that the provision should be retained but that any country considering it superfluous would of course be free not to include it in the law.

The Fourth Model Law Committee also considered whether subsection (2) should provide for the right of the applicant to be heard before his application is rejected. The Committee felt that it was unnecessary to provide for this right in the model law, each country being free to adopt such a provision, drafted in accordance with the principles of its procedural law.

Subsection (3) sets out a special procedure for the case where an application does not contain the particulars required by Section 7 or where the prescribed fees have not been paid or wholly paid. The Office must not refuse to register an application without giving the applicant an opportunity to remedy the defect within a certain time, to be fixed by the Rules. Registration can be refused only where the applicant does not remedy the defect within the time allowed.

Section 8: Fees

The Rules may prescribe fees for the filing of an application and for the registration of an appellation of origin.

Section 9: Examination of Application with Respect to Right to File and as to Form

(1) The Office shall examine whether the applicant has the right to apply for registration, whether the application contains the particulars required under Section 7, and whether the fees, where prescribed, have been paid.

(2) Where the applicant does not have the right to apply for registration, the application shall be rejected.

(3) Where the application does not contain the particulars required under Section 7 or where the prescribed fees have not been paid, the Office shall allow the applicant time to remedy the defect. Where the application is not rectified in time, it shall be rejected.

Commentary on Section 10

Section 10 of the draft model law consisted of two alternatives, in line with the three earlier model laws. Under the first alternative, there was an examination of applications as to substance and an opposition procedure; under the second, appellations of origin were registered after an examination solely relating to form. The alternative providing merely for an examination as to form was designed for countries which were for the first time adopting a system for the protection of appellations of origin and might not immediately be able to bring into operation an Office capable of carrying out an examination as to substance with a procedure for opposition. As a temporary measure, such countries would have been able to avail themselves of the system of a purely formal examination, to be abandoned however, as soon as possible, in favor of the other system.

The Fourth Model Law Committee felt that the first alternative was preferable from the point of view of the foreign trade of developing countries; the buyers on foreign markets would wish to be sure that an appellation of origin was being used legitimately, which meant that a verification would have to be made as to whether the products concerned were in fact entitled to bear the appellation. Consequently, the possibility of having a purely formal examination was rejected and the second alternative was not included in the model law.

Section 10 sets up a system of registration similar to Alternative B of Section 12 of the Model Law on Marks, Trade Names and Acts of Unfair Competition. This system need not be applied in its entirety. There could, for example, be an examination as to substance without any possibility for opposition, or a system of opposition could be provided for without any preliminary examination as to substance being carried out by the Office.

Under subsection (1), if the formal requirements in Section 9(1) have been fulfilled, the Office proceeds to the examination of the application as to substance. This examination covers four points:

(a) the Office verifies that the appellation filed is eligible for protection having regard to Section 5; it will for instance check that the appellation filed is not a generic name.

(b) The Office must determine whether the appellation filed covers the whole of the geographical area specified in the application. There are three different cases where the appellation and geographical area will not coincide: the appellation may not have any connection whatever with the geographical area; the area specified may be too large; the area may be too small. Only the first two cases can be obstacles to registration. If the geographical area is too small, the only remedy open is a new application specifying a larger area, or rectification of the registration in accordance with Section 13.

(c) The Office must examine whether the appellation filed covers all the products specified in the application. Here again, registration may not be refused where the list of products specified in the application is too small.

(d) The Office examines the application in relation to the essential characteristic qualities of the products. Where no characteristic qualities are specified in the application, the Office decides whether this omission is justified. If the essential characteristic qualities have been specified, the Office examines whether they are of a sufficient standard. This will not be the case, for instance, where an applicant seeking registration of an appellation of origin for wines has specified a minimum alcohol content of 10% and the Office feels that the appellation should be reserved for wines having an alcohol content of at least 11%. On the other hand, if the percentage specified is 11 and the Office feels that the appellation should also be available for wines containing only 10% alcohol, the application may not be rejected.

Section 10: Examination of Application
with Respect to Substance; Invitation for
Opposition; Registration of Appellation
of Origin

(1) Where the examination provided for in Section 9 shows, if necessary after Section 9(3) has been applied, that the application satisfies the requirements of Sections 6 to 8, the Office shall proceed to the examination of the application as to its substance, in order to determine:

(a) whether the appellation filed is eligible for protection having regard to Section 5;

(b) whether the appellation filed covers the whole of the geographical area specified in the application;

(c) whether the appellation filed covers all the products specified in the application;

(d) whether the products' essential characteristic qualities, as specified in the application, are sufficient.

(2) Where the Office considers that any of the requirements in the preceding subsection has or have not been fulfilled, it shall notify the applicant accordingly, stating the grounds on which the application appears unacceptable and giving the applicant a time limit of three months from the date of notification in which to submit his observations or to restrict or withdraw his application. Where the applicant does not reply within the time limit prescribed or where the application is not withdrawn and the Office considers, notwithstanding the applicant's observations or a restriction of the application, that registration should be refused, the application shall be rejected. Where however the Office considers that the application, or the application as restricted, should be accepted, subsection (3) shall apply.

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The Fourth Model Law Committee considered the question of what could be used by the Office as a point of reference when it is evaluating the characteristic qualities of a product in the absence of any established standards. Different systems could be adopted. Under one system, the Office would fix the standards on a case by case basis during the examination of each application for registration, after it had consulted the interested circles and all the official bodies which could be of assistance in the field concerned. Under another system, the standards would be established, again on a case by case basis, by the competent administrative authority (such as the Ministry of Agriculture in the case of agricultural products) or by a cooperative institution under State control; the task of the Office would then be to compare the characteristic qualities specified in the application with the standards fixed in the manner described.

Subsection (2) regulates the procedure to be followed where the Office considers that any of the requirements in subsection (1) have not been fulfilled. The Office notifies the applicant of the result of its examination and prescribes a time limit--three months from the date of the notification--for him to submit his observations or to restrict or withdraw his application. The starting point for this time limit, and indeed for all the time limits prescribed by the model law, may differ according to the legal system of the country in which it is in force. In line with what has been said concerning subsection (1), the application may not be amended so as to increase the geographical area or the list of products or to set a lower standard for the products' characteristic qualities. The application can only be restricted: this might be by means of a restriction on the geographical area or on the list of products or by means of an indication of superior qualities. Before deciding whether the application should be rejected or whether it can go forward to the next stage of the procedure, the Office takes account of any observations made by the applicant or of any restrictions made to the application.

If the Office considers that the application should be accepted, it publishes its contents, in accordance with subsection (3), in order to give third parties an opportunity to oppose registration.

Subsection (4) gives a right of opposition in the first place to any person showing a legitimate interest. When the question of legitimate interest is being considered, account should be taken of the fact that it is in the general interest, especially in that of consumers, that appellations of origin should not deceive the public; moreover the purpose of opposition is to draw the Office's attention to facts of which it may not be aware. In the second place, in order to ensure that the general interest is always safeguarded, a right of opposition is given to any competent authority. Such an authority will have to be designated by the country adopting the model law and should be the same as the authority referred to in Sections 6, 12 and 13.

For the grounds of opposition, subsection (4) refers to the points listed in subsection (1)(a) to (d). An opponent cannot therefore require the geographical area or list of products to be enlarged or demand a lower standard for the products' characteristic qualities. The only course available to a third party who feels prejudiced in this respect is either to file a new application for registration and apply to the courts for the cancellation of the registration to which he objects or to apply for rectification of the registration in accordance with Section 13 (see commentary on that Section). This solution has been chosen in the model law principally to avoid burdening the registration procedure. If the opposition procedure could lead to an enlargement of the application, there would have to be a new publication and a new invitation for opposition, which would delay the procedure by at least three months.

Subsection (4) also sets out the formal requirements relating to opposition. In particular, it specifies the time limit for entering opposition.

Subsection (5) applies to the case where opposition is lodged within the period prescribed in subsection (4). The Office will not decide on the opposition before giving the applicant an opportunity to submit his observations or to restrict or even withdraw his application. This procedure must be followed in the case of each opposi-

(3) Where the Office considers, if necessary after subsection (2) has been applied, that all the requirements in subsection (1) have been fulfilled, it shall publish the application.

(4) Where any person showing a legitimate interest or any competent authority considers that any of the requirements in subsection (1)(a) to (d) has or have not been fulfilled, he or it may give notice of opposition to such registration within three months from the date of publication of the application. The opposition, which shall be addressed to the Office, shall be in writing and shall state the grounds on which it is based. The Rules may provide that opposition shall be admissible only upon payment of an opposition fee.

(5) In the event of opposition the Office shall notify the applicant, identifying the opponent and stating the grounds, and shall give the applicant a time limit of three months from the date of notification in which to submit his observations or to restrict or withdraw his application. On the expiration of the time limit, the Office shall decide on the opposition, notify its decision to the applicant and the opponent and either register the appellation of origin or reject the application.

(6) Where no opposition is lodged within the time limit prescribed in subsection (4), the appellation of origin shall be registered.

(7) Upon a request showing cause, the Office may grant a reasonable extension of any time limit prescribed in this Section.

(8) The details of the application of this Section shall be fixed by the Rules.

tion lodged. The Office comes to its decision taking into account any observations made by the applicant or any restriction of the application. According to the result of its examination it will either register the appellation of origin or reject the application, after notifying the applicant and the opponent of its decision.

Where no opposition is lodged within the period prescribed in subsection (4), subsection (6) applies: the Office registers the appellation of origin.

Subsection (7) allows the Office to grant, upon a request showing cause, a reasonable extension of the time limits prescribed by Section 10, including the time limit for opposition.

Subsection (8) is a reminder that the provisions of the Section are to be supplemented by the Rules.

Commentary on Section 11

This Section is to some extent similar to Sections 19 and 20 of the Model Law on Inventions, Sections 13 and 14 of the Model Law on Marks, Trade Names and Acts of Unfair Competition, and Sections 16 and 17 of the Model Law on Industrial Designs.

Subsection (1) provides that the Office is to maintain a special register for registered appellations of origin.

Under subsection (2), the registration must include all the contents of the application, or of the application as restricted in accordance with Section 10(2).

The contents of the application are set out in Section 7. Care will have to be taken to avoid mistakes when the geographical area to which the appellation applies, the products for which the appellation is used, and the essential characteristic qualities of the products, are entered in the Register.

Subsection (3) provides that the registration is to be notified to the applicant and to be published. Publication will be made in the official journal of the Office, in accordance with the relevant provisions in the Rules.

Subsection (4) allows the Register to be consulted and extracts from it obtained.

Subsection (5) emphasizes that Section 11 is to be supplemented by the Rules, which will in particular have to specify what the registration and the published notice are to contain, how often the official gazette is to appear, and on what terms extracts from the Register can be obtained.

Section 11: Contents of Register and
Consultation thereof; Publication of
Registered Appellations of Origin

(1) The Office shall maintain a Register in which appellations of origin shall be registered.

(2) All the contents of the application, or the application as restricted in accordance with Section 10(2), shall be registered.

(3) The Office shall notify the applicant of the registration effected and publish it.

(4) The Register may be consulted free of charge. Any person may obtain extracts therefrom at his own expense.

(5) The details of the application of this Section shall be fixed by the Rules.

Commentary on Section 12

Subsection (1) provides for the judicial review, before the court of the place where the Office is located, of final decisions of the Office.

In this context, a decision will be "final" only when all the internal remedies before the Office have been exhausted.

Countries adopting the model law will have to specify, in subsection (1), the kind of court which is to have jurisdiction--whether it is to be an ordinary court, an administrative court or a commercial court, for instance. A space inside brackets has been left for this purpose in the model law.

The judicial review may be sought by any person showing a legitimate interest or by the competent authority designated by the country where the law is in force. The authority should be the same as in the case of Sections 6, 10 and 13.

There is a referral to Section 18(2) which takes account of the remedies, by way of appeal or annulment or revision of decisions, which will be available under the ordinary law of the country adopting the model law.

Subsection (2) requires the applicant (if he is not the appellant) and the general public to be informed of appeals against the decisions of the Office and also of the decisions taken on such appeals. It is important that the general public should know about any act or decision that may affect the legal status of a registered appellation of origin. The details of such publication should be regulated in the Rules. These might provide, for instance, that only the relief sought and the essential holding of the judgment should be published.

Subsection (3) concerns the execution of a judgment ordering an appellation of origin to be registered (when an appeal against the Office's refusal to register is successful).

Section 12: Appeals against Final
Decisions of Office

(1) Any person showing a legitimate interest or any competent authority may appeal against a final decision of the Office to the [?..] court of the place where the Office is located, under the conditions prescribed in Section 18(2).

(2) The Office shall inform the applicant of appeals and the judgments thereon, except where it was the applicant who lodged the appeal, and shall publish them.

(3) When a judgment ordering an appellation of origin to be registered becomes final, a copy shall be transmitted to the Office, which shall register and publish the appellation of origin.

COMMENTARY ON CHAPTER III

This Chapter, consisting of a single section, sets out a judicial procedure for the cancellation or rectification of registrations of appellations of origin. After an appellation of origin has been registered, it may be found necessary to amend the registration or even to cancel it. To avoid having two different systems for the same purpose, the model law does not provide any administrative procedure for requesting cancellation or rectification of a registration. Such a request must therefore be made to a court; the Office will have no power to cancel or amend a registration in the absence of a judicial decision.

Commentary on Section 13

Subsection (1) first of all deals with the question of who may bring cancellation or rectification proceedings: it gives this right to any person showing a legitimate interest and (so as to safeguard the public interest in all cases) to any competent authority. The country where the law is in force will have to designate such authority; logically, it should be the authority designated for the purposes of Sections 6, 10 and 12.

Subsection (1) then provides for two forms of relief, which have different purposes and for which different grounds are pleaded. The first is the cancellation of the registration and will be granted if the appellation of origin is ineligible for protection having regard to Section 5. An appellation may, for example, have been rightly registered but have subsequently become a generic name; an application for cancellation is not therefore necessarily made to correct an error on the part of the Office (this example is only relevant to countries retaining Section 5(c) of the model law).

The second form of relief is the rectification of the registration. Here, unlike the position under Section 10, the amendment sought need no longer be in the form of a restriction but may also consist in an enlargement of the registration, as can be seen from the list of grounds that may be relied on. These are:

(i) that the geographical area does not correspond to the appellation of origin; in this case, the area must be restricted or enlarged;

(ii) that the indication of the products for which the appellation of origin is used is unsatisfactory; in this case, the list of products must be restricted or enlarged;

(iii) that the indication of the essential characteristic qualities of the products is unsatisfactory; the standard set may be too low, which will entail a restriction of the registration, or it may be too high, in which case the registration must be enlarged.

The plaintiff in proceedings under Section 13 is not bound to restrict his claim to one of the two forms of relief. He can demand cancellation as his principal claim and rectification as a subsidiary claim.

Subsection (2) lays down the formal requirements governing applications for cancellation and rectification.

CHAPTER III: CANCELLATION AND
RECTIFICATION OF REGISTRATION

Section 13: Cancellation and
Rectification of Registration

(1) Any person showing a legitimate interest or any competent authority may request the court to order:

(a) the cancellation of a registration of an appellation of origin on the ground that it is ineligible for protection as such having regard to Section 5;

(b) the rectification of a registration of an appellation of origin on the ground that the geographical area specified in the registration does not correspond to the appellation of origin, or that the indication of the products for which the appellation of origin is used or the indication of the essential characteristic qualities of such products is unsatisfactory.

(2) The application for cancellation or rectification of the registration shall state:

(a) the applicant's name, address and nationality;

(b) the registration whose cancellation or rectification is sought;

(c) the cancellation or rectification sought;

(d) the grounds on which cancellation or rectification is sought.

Since there is no owner of the registration or of exclusive rights in the appellation of origin, the proceedings cannot be instituted against a particular person. For this reason, subsection (3) provides for the publication of applications for cancellation or rectification as well as a public invitation to persons who wish to intervene in order to prevent a registration from being cancelled or altered. The term "objectors" has been chosen for such persons since it corresponds best to the special legal nature of the action that they are taking, but another term can be used if a country adopting the model law so desires.

Subsection (4) specifies who may be an objector. This right is given in the first place to the producers and the other persons authorized to use the registered appellation of origin under Section 14(1) and (2). In the second place, it is given to consumer groups and, in the third place to the competent authority; this is in order to safeguard the public interest, in particular where no one authorized to use the appellation of origin comes forward to defend it.

Under subsection (5), if no objector has come forward in time, the court will decide on the cancellation or rectification sought without being obliged to go into the merits of the case; it is however free to demand any evidence which it considers useful.

On the other hand, under subsection (6), if there are one or more objectors, the court will always examine the merits of the application provided of course that it is admissible.

In its decision, the court may either dismiss the application or allow it in whole or in part, but it may not go beyond the terms of the relief sought. This means that, in an application for cancellation of a registration, where the court allows the application in part it may order the registration to be restricted but not enlarged. Similarly, where a restriction of a registration is requested in an application for rectification, the court may not order the registration to be cancelled or enlarged, or to be restricted to a greater extent than was requested; again, if enlargement is requested in an application for rectification, the court may order neither cancellation, nor a restriction, nor a more extensive enlargement than the one requested. These principles are all the more important in that the decision of a person considering whether to come forward as an objector can only be made on the basis of the relief sought in the application. At the same time, if the court is ordering the restriction of a registration, it may allow persons who will subsequently no longer have the right to use the appellation of origin concerned a transitional period in which to terminate such use (see the commentary on Section 14(3)).

Subsection (7) provides that the court ordering cancellation or rectification must specify the date on which the relief granted is to take effect. The order may be made retroactive - where appropriate, to the date of registration.

Subsection (8) deals with the measures that must be taken by the Office where a court orders the cancellation or rectification of a registration. It also provides that any person showing a legitimate interest may act in reliance upon the judgment, once it has become final, without having to wait for the Office to take the necessary measures in compliance with it.

(3) The application for cancellation or rectification of the registration shall be published and potential objectors shall be invited by a public notification to come forward, within three months from the date of the notification, and inform the court of their desire to oppose the application.

(4) The following may be objectors:

(a) persons having the right to use the appellation of origin under Section 14(1) and (2), as well as groups of such persons;

(b) groups of consumers;

(c) any competent authority.

(5) Where no objector within the meaning of the preceding subsection has come forward in time in accordance with subsection (3), the court shall decide the application for cancellation or rectification of the registration without being obliged to examine its merits.

(6) Where an objector or objectors within the meaning of subsection (4) come forward in time in accordance with subsection (3), the court shall examine the merits of the application for cancellation or rectification of the registration, and shall decide such application.

(7) The judgment ordering cancellation or rectification of a registration shall specify the date on which the relief granted is to take effect; such date may be earlier than the date of the judgment.

COMMENTARY ON CHAPTER IV

This Chapter deals with the legal consequences of registration of an appellation of origin. Section 14 defines who has the right to use the appellation, and Sections 15 and 16 lay down the civil and penal sanctions for unlawful use. The effects of registration are not limited in time; they will subsist without any need for renewal of registration.

Commentary on Section 14

As has already been mentioned, registration does not create any exclusive right to the use of a registered appellation of origin, but authorizes person fulfilling certain conditions to use the appellation. In other words, this authorization has the effect, subject to clearly defined exceptions, of a general prohibition against using the registered appellation of origin--a prohibition which cannot be removed with the consent of the beneficiaries since they do not enjoy any exclusive rights. It is in fact for this same reason that the model law makes no provision for licenses.

Subsection (1) sets out the conditions for using registered appellations of origin with respect to the products specified in the Register. There are three such conditions:

(i) the user must be a producer or trader carrying on his activity in the geographical area specified in the Register; this is subject to one exception under subsection (2) (see also subsection (3)).

(ii) the products for which the appellation is used must be those specified in the Register;

(iii) the products must have the essential characteristic qualities specified in the Register. Example: the registration of an appellation of origin for wine specifies an alcohol content of at least 12%; it will not be permissible to use the appellation of origin for wine originating in the same geographical area if it has a lower or higher alcohol content.

Subsection (2) enlarges the circle of persons authorized to use a registered appellation of origin: persons other than the producers carrying on their activity in the specified geographical area may use the appellation for products which have been put on the market under the appellation in the conditions defined in subsection (1). This provision is indispensable to enable wholesalers and retailers not carrying on their activity in the area concerned to use the appellation when advertising and reselling the products. The registered appellation of origin may not however be used for a product originating in the specified geographical area, even when it fulfills the conditions relating to quality, unless it has been put on the market by a producer carrying on his activity in the geographical area concerned. This

(8) When the judgment ordering cancellation or rectification of a registration has become final, a copy thereof shall be transmitted to the Office, which shall cancel or amend the registration in accordance with the judgment and shall publish such cancellation or amendment. Even before the Office has taken such measures, any person showing a legitimate interest may act in reliance upon the judgment.

CHAPTER IV: RIGHT TO USE REGISTERED APPELLATION
OF ORIGIN; SANCTIONS AGAINST UNLAWFUL USE

Section 14: Right of Use

(1) Subject to subsections (2) and (3), only producers carrying on their activity in the geographical area specified in the Register shall have the right to use a registered appellation of origin, in the course of trade, with respect to the products specified in the Register, provided that such products possess the essential characteristic qualities specified in the Register.

(2) When products have been put on the market under a registered appellation of origin in the conditions defined in the preceding subsection, any person shall have the right to use the appellation of origin for those products.

last condition enables producers to restrict the use of the appellation of origin to products which fully meet with their approval. By means of this provision, they will moreover be able to exercise a certain amount of control over the quality of the products sold under the appellation of origin; this can be important in the field of distribution and sales. Such a restriction is not detrimental to consumers, since products originating in the same region which are not entitled to the appellation due to their quality are usually sold at a lower price.

Subsection (3) is based on Article 5(6) of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration; it was inserted in the model law at the request of the Fourth Model Law Committee. Its object is to prevent the hardship which the registration of an appellation of origin may cause to producers whose activity is not carried on in the area specified in the Register or is carried on in the area but relates to products which do not have the essential characteristic qualities specified in the Register. Such producers would suddenly be compelled, as from the registration, to desist from marketing their products under an appellation which they may have been using for a very long time. By means of subsection (3), these excessively detrimental effects of registration can be mitigated. The provision enables interested producers to apply to the Office for permission to continue to use the appellation during a certain period. Only producers acting in good faith will be able to benefit from this concession. The Office will have a certain margin of appreciation: permission will not be granted where a producer is in bad faith--where, for instance, he began to use the appellation shortly before registration with a view to taking an unjustified advantage of the transitional period which may be allowed. The Office will moreover be free to grant permission for a shorter period in some cases and a longer one in others, depending upon the particular circumstances of each case. However, the transitional period will not exceed two years counted from the registration of the appellation. This is the period provided for in Article 5(6) of the Lisbon Agreement. Each country wishing to adopt the model law can however provide for a different period in line with its special conditions. The second sentence of subsection (3) provides for the registration and publication of the permission. The third sentence of subsection (3) lays down a rule which is similar to the one provided for in subsection (2): wholesalers and retailers will be able to use the appellation, for the transitional period, with respect to products put on the market whether before or after the grant of permission. Without the third sentence, subsection (3) would be valueless to producers who do not sell their products directly to the public.

Subsection (4) specifies the scope of protection. Three aspects of such protection should be discussed here:

(i) extension of protection to exclude similar names: the model law prohibits not only the use of the appellation itself but also the use of similar names or of translations of the appellation; the criteria adopted in trademark law can be used here to decide questions of similarity (see commentary on Section 18 of the Model Law on Marks, Trade Names and Acts of Unfair Competition);

(ii) extension of protection to exclude similar products: the criterion for similarity is provided by trademark law (see commentary on Section 18 of the Model Law on Marks, Trade Names and Acts of Unfair Competition);

(iii) extension of protection to cover cases where an identical or similar product originates in a different region and bears a statement showing its true origin or simply a statement that the product has been manufactured by the same methods as the products covered by the registered appellation of origin. This extension is extremely important in practice; there is in fact often a tendency to think of an appellation of origin as an indication of a certain way of manufacturing a product or as an indication of a certain type of product. If an appellation of origin could be used where the only common factor is that the products concerned were manufactured using the same methods, the registered appellation of origin might well become a generic term in a very short time. For this reason the model law prohibits such a practice --in line with the provisions of the Lisbon Agreement (Article 3).

(3) Where, before its registration, an appellation of origin was being used in good faith by producers not falling within the scope of subsection (1), the Office may, at the request of such producers, grant them permission to continue to use the appellation of origin during a period to be fixed by the Office and not exceeding two years counted from the registration concerned. The grant of permission shall be registered and published by the Office. When the said producers have put products on the market under a registered appellation of origin, any person shall have the right to use the appellation of origin for those products until the end of the period of permission.

(4) Apart from the cases mentioned in the three preceding subsections, it shall be unlawful to use, in the course of trade, a registered appellation of origin, or a similar name, with respect to the products specified in the Register or similar products, even if the true origin of the products is indicated or if the appellation is in the form of a translation or is accompanied by terms such as "kind," "type," "make," "imitation," or the like.

(5) The [national authority] may order that the quality of products put on the market under a registered appellation of origin shall be subject to control and that the use of such an appellation for products of inferior quality shall be unlawful. The order shall specify the authority competent to exercise such control and to declare the use of an appellation of origin to be unlawful; the relevant procedure shall be laid down in the order.

Subsection (5) provides for the possibility of a system for controlling the quality of products covered by a registered appellation of origin. Such a system could be set up under a special law or order, specifying in particular the competent authority for exercising the control as well as the procedure to be followed. This kind of administrative control would be a more effective means of ensuring that products put on the market under a registered appellation of origin conform to the quality standard specified in the registration. In any event, it will be possible to exercise a degree of control over the quality of products marketed under an appellation of origin by means of the civil and criminal actions available under Sections 15 and 16 of the model law.

The countries adopting the model law will have to decide which competent authority will have the power to order the control. It could be the authority which is to issue the Rules (see Section 19 and its commentary).

Commentary on Section 15

This Section sets out the remedies available under the civil law where a registered appellation of origin is being unlawfully used. Unlawful use means use contrary to Section 14.

Subsection (1) states who may bring proceedings to obtain the relief provided for in subsection (2) and against whom the relief may be ordered.

The relief may be sought by any interested person. Persons who have been or are likely to be damaged by the unlawful use are examples of interested persons. Groups of such persons may also apply for the relief. This right is very important in practice since the interests of the beneficiaries of appellations of origin are frequently defended by professional associations and similar groups. Consumer groups are also among those entitled to bring proceedings. For what is meant by the word "group," see the commentary on Section 6.

The relief may be ordered not only against the person who is actually making unlawful use of a registered appellation of origin but also against persons who have played a part in such use. They will be liable to the same sanctions as the principal defendant in the proceedings.

Subsection (2) provides for two forms of relief. The first is an injunction. This remedy is available where the unlawful use has actually been committed or where such use is imminent; in the latter case, the plaintiff must show, on the balance of probability, that the unlawful use will take place in the near future. Where the use is only imminent, there will be no possibility of obtaining damages. The purpose of the second remedy, which was provided for at the suggestion of the Fourth Model Law Committee, is to suppress the state of illegality: the destruction will be ordered of labels and other documents which have contributed or are likely to contribute to the unlawful use of a registered appellation of origin. The products bearing the appellation in unlawful use need not themselves be destroyed; but since the labels are to be destroyed, it may be necessary in some cases for the court to order the seizure of the products, which will be allowed to be put on the market or returned to circulation only when the state of illegality has been suppressed.

Subsection (3) provides a third remedy: compensation for the damage caused by the unlawful use. This remedy is available only in the case of actual damage. Only the person or persons who are actually injured are entitled to apply for damages. As is the case with the two other remedies under Section 15, both the principal defendant and the other parties to the unlawful use will be liable.

Section 15: Civil Sanctions

(1) Any interested person and any interested group of producers or consumers may bring proceedings to obtain the relief provided for in subsection (2) against persons making unlawful use, within the meaning of Section 14(4), of a registered appellation of origin and persons who are parties to such use.

(2) Without prejudice to subsection (3), the courts shall issue an injunction to prohibit the unlawful use, within the meaning of Section 14(4), of a registered appellation of origin, where such use is actually being carried on or is imminent, and shall order the destruction of labels and other documents which have contributed or are likely to contribute to such unlawful use.

(3) Any person who has suffered damage as a result of the unlawful use, within the meaning of Section 14(4), of a registered appellation of origin shall be entitled to compensation from the person making unlawful use of the appellation and persons who are parties to such use.

Commentary on Section 16

Persons who intentionally commit unlawful use will be liable to the penalties laid down in accordance with the principles of the criminal law of the country adopting the model law.

The provision corresponds to Section 53(2) of the Model Law on Marks, Trade Names and Acts of Unfair Competition.

COMMENTARY ON PART III

The third part of the model law relates to its second subject: indications of source. These are defined in Section 1(b) and serve merely to indicate that a product originates in a given geographical area. Under Section 4(3), the protection given to indications of source is subsidiary to the protection enjoyed by appellations of origin. Where a geographical name can constitute an appellation of origin, it is more advantageous for users and consumers if it is protected as such. It will then guarantee not only the source of the product, but also the presence of the characteristic qualities connected with its origin. Such protection depends however on registration of the appellation of origin. If this requirement is not fulfilled, the appellation of origin can be protected only as an indication of source. This will be the case for example, in the absence of an international convention, where the appellation of origin relates to a foreign geographical area.

Part III of the model law consists of a single section defining unlawful use of an indication of source, and providing sanctions.

Commentary on Section 17

Subsection (1) defines unlawful use of an indication of source. It corresponds to Section 51(1)(a) of the Model Law on Marks, Trade Names and Acts of Unfair Competition.

Subsection (2) corresponds to Section 53 of the Model Law on Marks, Trade Names and Acts of Unfair Competition.

Section 16: Penal Sanctions

Anyone intentionally making unlawful use, within the meaning of Section 14(4), of a registered appellation of origin shall be liable to a fine of not less than ... and not more than ... or to imprisonment for a term of not less than ... and not more than ..., or to both such fine and such imprisonment.

PART III: INDICATIONS OF SOURCE

Section 17: Unlawful Use of Indication of Source

- (1) The direct or indirect use of an indication of source which is false or which is likely to mislead the public shall be unlawful.
- (2) Sections 15 and 16 shall apply.

COMMENTARY

COMMENTARY ON PART IV

This part contains provisions of a general nature relating to the competence of the courts and to the Rules.

Commentary on Section 18

This Section corresponds to Section 58 of the Model Law on Inventions, Section 54 of the Model Law on Marks, Trade Names and Acts of Unfair Competition, and Section 38 of the Model Law on Industrial Designs. Since legal systems differ considerably from one country to another, each country will have to adapt the solutions proposed in the model law to the requirements of its own system.

Commentary on Section 19

Countries adopting the model law will have to designate the authority competent to issue the Rules (see the commentary on Section 14(5)). It might for example be the Ministry to which the Office belongs.

COMMENTARY ON PART V

This part of the model law contains, in a single section, the provisions that relate to entry into force of the Law, repeal of existing legislation, and transitional law.

Commentary on Section 20

Countries adopting the model law will have to complete subsections (1) and (2) by adding the date of entry into force of the law and the list of legislative provisions repealed.

Subsection (3) maintains the privileged position of beneficiaries of appellations of origin that are already protected at the time of entry into force of the law, provided however that an application for their registration under the new law is made within a certain period (to be fixed by each country) after the law's entry into force.

PART IV: COMPETENCE OF COURTS; RULES

Section 18: Competence of Courts

(1) The ordinary courts shall be competent to deal with all litigation concerning the application of Sections 15 to 17.

(2) The decisions of the courts shall be subject to appeal, annulment or revision, according to the general rules of procedure.

Section 19: Rules

The [national authority] shall issue the Rules, prescribing the details of application of this Law, particularly in regard to Sections 8, 10(8) and 11(5).

PART V: FINAL AND TRANSITIONAL PROVISIONS

Section 20: Final and Transitional Provisions

(1) This Law shall enter into force on ...

(2) The following are hereby repealed: ...

(3) Appellations of origin protected under [previous law] shall continue to be protected under that Law, provided that an application for their registration is filed in accordance with this Law within [three years] from its entry into force, until a final decision has been taken on such application.

ANNEX

ANNEXPROTECTION OF APPELLATIONS OF ORIGIN UNDER
SYSTEM OF SPECIAL ORDERS

The Annex to the model law provides for the possibility of protection on the basis of special orders issued by the authority specified in the law. Such a system in fact exists in a few countries.

The Annex consists of two alternatives: under Alternative A the registration system has been replaced by a system of special orders for the protection of appellations of origin; Alternative B provides for the combination of the registration system with the system of special orders.

Commentary on Alternative A

In countries adopting the system of special orders provided for in Alternative A, the model law will become a general law establishing the general principles of protection and empowering the authorities to issue orders laying down, for each protected appellation of origin, the conditions for protection and its limits, in particular with respect to the geographical area, and specifying the products for which the appellation is used and the characteristic qualities required for those products.

The system of special orders and the registration system have the same purpose and the same effects, but employ different means. With the registration system, interested persons file an application for registration, thus initiating an administrative procedure which automatically runs its course. With the system of special orders, interested persons have to request the authorities to issue the order they desire, but there is no automatic administrative procedure obliging the authorities to act.

Alternative A reproduces, with the necessary adaptations, all the provisions of the model law except those which refer to registration or relate to the Office, since under such a system there will not be any special office.

Section 4 has been replaced by a Section D under which only appellations of origin protected by an order enjoy the special protection provided for in Part II of the law. It follows that, unlike the model law itself, the second chapter of Part II of Alternative A does not apply to appellations of origin that are protected by virtue of an international convention, since that chapter relates to the system of special orders. Countries adopting Alternative A will therefore have to draw up a law applying the convention so as to regulate its effects.

Subsection (2) of Section D specifies the authority empowered to issue the orders and the manner in which they are to be published. When the model law is being adopted, the brackets will have to be replaced by specific terms, "Ministry of the Economy" and "Official Gazette," for example.

Subsection (3) of Section D specifies the contents of the order, which are similar to those of the register under the registration system (see Sections 11(2) and 7 of the model law).

Section 5 has not been incorporated in Alternative A since the exclusion from protection on the grounds stated in that section is out of place where an appellation of origin is protected on the basis of a special order.

One other provision of Alternative A, Section E(3), has important differences as compared with its counterpart in the model law, Section 14(3). Under Section E(3), the permission enabling producers who are no longer entitled to use an appellation of origin

to continue such use for a transitional period will be accorded by the order protecting the appellation concerned. Producers who fear that they are going to be deprived of the right of use will therefore have to take action, at the time when the order is being drawn up, to have the necessary permission provided for. Moreover, the second sentence of Section 14(3) of the model law has not been included in Alternative A, first, because any reference to registration is meaningless in the context of this alternative and, second, because the order is published so that there is no need to provide for a special publication of the permission.

ALTERNATIVE A: REPLACEMENT OF REGISTRATION
SYSTEM BY SYSTEM OF SPECIAL ORDERS.

PART I: GENERAL PROVISIONS

Section A: Definitions

For the purposes of this Law:

(a) "appellation of origin" means the geographical name of a country, region or specific place which serves to designate a product originating therein the characteristic qualities of which are due exclusively or essentially to the geographical environment, including natural factors, human factors, or both natural and human factors; any name which is not that of a country, region or specific place is also considered a geographical name if it relates to a specific geographical area when used in connection with certain products;

(b) "indication of source" means any expression or sign used to indicate that a product or service originates in a country, a region or a specific place;

(c) "product" means any natural or agricultural product or any product of handicraft or industry;

(d) "producer" means:

(i) any producer of agricultural products or any other person exploiting natural products,

(ii) any manufacturer of products of handicraft or industry, and

(iii) any trader dealing in the said products.

Section B: Applicability of International Conventions

The relevant provisions of international bilateral or multilateral conventions to which [the country] is or will become a party, which regulate the rights of nationals of States parties to such conventions and of persons assimilated to such nationals, may be invoked by virtue of this Law.

Section C: Position of Foreigners in Absence of International Convention

Foreigners who do not fall within the scope of the preceding Section shall have the same rights under this Law as nationals.

PART II: APPELLATIONS OF ORIGIN

CHAPTER I: REQUIREMENTS FOR PROTECTION

Section D: Orders

(1) Part II of this Law shall apply only to appellations of origin protected by orders.

(2) The orders shall be issued by the [national authority] and published in the [official publication].

(3) Each order shall state:

(a) the appellation or appellations of origin concerned;

(b) in the case of each such appellation of origin--

(i) the geographical area to which the appellation applies;

(ii) the products for which the appellation is used, in terms sufficiently precise to show, in particular, whether the products are raw materials, semi-finished products or finished products;

(iii) where feasible, the essential characteristic qualities of the products for which the appellation is used.

(iv) the date of commencement of protection.

(4) In the absence of an order, appellations of origin shall be protected as indications of source.

CHAPTER II: RIGHT TO USE PROTECTED APPELLATION OF ORIGIN; SANCTIONS AGAINST UNLAWFUL USE

Section E: Right of Use

(1) Subject to subsections (2) and (3), only producers carrying on their activity in the geographical area specified in the order shall have the right to use a protected appellation of origin, in the course of trade, with respect to the products specified in the order, provided that such products possess the essential characteristic qualities specified in the order.

(2) When products have been put on the market under a protected appellation of origin in the conditions defined in the preceding subsection, any person shall have the right to use the appellation of origin for those products.

(3) In the order, producers who do not fall within the scope of subsection (1) and who were, in good faith, using the appellation of origin before it was protected may be granted permission to continue to use the appellation of origin during a period to be fixed in the order and not exceeding two years counted from the order's entry into effect. When the said producers have put products on the market under the appellation of origin, any person shall have the right to use the appellation of origin for those products until the end of the period of permission.

(4) Apart from the cases mentioned in the three preceding subsections, it shall be unlawful to use, in the course of trade, a protected appellation of origin, or a similar name, with respect to the products specified in the order or similar products, even if the true origin of the products is indicated or if the appellation is in the form of a translation or is accompanied by terms such as "kind," "type," "make," "imitation," or the like.

(5) The [national authority] may order that the quality of products put on the market under a protected appellation of origin shall be subject to control and that the use of such an appellation for products of inferior quality shall be unlawful. The order shall specify the authority competent to exercise such control and to declare the use of an appellation of origin to be unlawful; the relevant procedure shall be laid down in the order.

Section F: Civil Sanctions

(1) Any interested person and any interested group of producers or consumers may bring proceedings to obtain the relief provided for in subsection (2) against persons making unlawful use, within the meaning of Section E(4), of a protected appellation of origin and persons who are parties to such use.

(2) Without prejudice to subsection (3), the courts shall issue an injunction to prohibit the unlawful use, within the meaning of Section E(4), of a protected appellation of origin, where such use is actually being carried on or is imminent, and shall order the destruction of labels and other documents which have contributed or are likely to contribute to such unlawful use.

(3) Any person who has suffered damage as a result of the unlawful use, within the meaning of Section E(4), of a protected appellation of origin shall be entitled to compensation from the person making unlawful use of the appellation and persons who are parties to such use.

Section G: Penal Sanctions

Anyone intentionally making unlawful use, within the meaning of Section E(4), of a protected appellation of origin shall be liable to a fine of not less than ... and not more than ... or to imprisonment for a term of not less than ... and not more than ..., or to both such fine and such imprisonment.

PART III: INDICATIONS OF SOURCE

Section H: Unlawful Use of Indication of Source

(1) The direct or indirect use of an indication of source which is false or which is likely to mislead the public shall be unlawful.

(2) Sections F and G shall apply.

PART IV: COMPETENCE OF COURTS; RULES

Section I: Competence of Courts

(1) The ordinary courts shall be competent to deal with all litigation concerning the application of Sections F to H.

(2) The decisions of the courts shall be subject to appeal, annulment or revision, according to the general rules of procedure.

Section K: Rules

The [national authority] shall issue the Rules, prescribing the details of application of this Law.

PART V: FINAL AND TRANSITIONAL PROVISIONS

Section L: Final and Transitional Provisions

(1) This Law shall enter into force on ...

(2) The following are hereby repealed ...

(3) Appellations of origin protected under [previous law] shall continue to be protected under that Law.

Commentary on Alternative B

Alternative B is a combination of the main text of the model law and Alternative A. The observations made concerning Alternative A are applicable mutatis mutandis, although it should be stressed that the Office exists and takes action only for appellations of origin that are the subject of registration or of an application, as opposed to appellations of origin protected by an order. This means that in the case of a given appellation the registration system and the system of special orders cannot be combined: an appellation protected by an order will not be registered. A combination is possible therefore only in the general context of the protection of appellations of origin in the country choosing Alternative B; in such a country there will be two categories of protected appellations of origin, appellations that are the subject of an order and registered appellations. Although the procedure for acquiring the protection is different, the protection itself is similar: the civil and criminal sanctions are in principle applicable in the same way to both kinds of appellations of origin.

Only three provisions of Alternative B call for particular comment. These are Section IV, Section V and Section XV(3).

With regard to Section IV, it should be noted that the protection provided for in Chapter IV of Part II applies to three categories of appellations: first, appellations that are the subject of an order; second, appellations that have been registered with the Office; third, appellations that are to be treated as having been registered, by virtue of an international convention. Alternative B therefore regulates appellations which are the subject of an international convention only where, by virtue of the convention, they are to be treated as having been registered. Where this is not the case, countries adopting Alternative B will have to draw up a law applying the convention (see in this connection the commentary on Alternative A, Section D).

In Section V, the exclusion from protection applies only to appellations protected on the basis of a registration or by virtue of an international convention. Appellations protected on the basis of an order are treated in the same way as under Alternative A.

Section XV(3) consists of three paragraphs. Paragraph (a), which is identical to the first sentence of Section E(3) of Alternative A, applies to appellations of origin that are the subject of an order. Paragraph (b), which reproduces word for word the first two sentences of Section 14(3) of the model law, applies to appellations of origin that are protected under the registration system. Paragraph (c), which corresponds to the last sentence of each of those provisions, applies to all appellations of origin.

ALTERNATIVE B: COMBINATION OF REGISTRATION
SYSTEM AND SYSTEM OF SPECIAL ORDERS

PART I: GENERAL PROVISIONS

Section I: Definitions

For the purposes of this Law:

(a) "appellation of origin" means the geographical name of a country, region or specific place which serves to designate a product originating therein the characteristic qualities of which are due exclusively or essentially to the geographical environment, including natural factors, human factors, or both natural and human factors; any name which is not that of a country, region or specific place is also considered a geographical name if it relates to a specific geographical area when used in connection with certain products;

(b) "indication of source" means any expression or sign used to indicate that a product or service originates in a country, a region or a specific place;

(c) "product" means any natural or agricultural product or any product of handicraft or industry;

(d) "producer" means:

(i) any producer of agricultural products or any other person exploiting natural products,

(ii) any manufacturer of products of handicraft or industry, and

(iii) any trader dealing in the said products;

(e) "application" means an application for registration of an appellation of origin;

(f) "Office" means the authority responsible for administering this Law.

Section II: Applicability of International Conventions

The relevant provisions of international bilateral or multilateral conventions to which [the country] is or will become a party, which regulate the rights of nationals of States parties to such conventions and of persons assimilated to such nationals, may be invoked by virtue of this Law.

Section III: Position of Foreigners in Absence of International Convention

Foreigners who do not fall within the scope of the preceding Section shall have the same rights under this Law as nationals [--with the exception of the right to file applications for registration of an appellation of origin under Section VII, this right being reserved to nationals].

PART II: APPELLATIONS OF ORIGIN

CHAPTER I: REQUIREMENTS FOR PROTECTION

Section IV: Orders or Registration

(1) Appellations of origin shall be protected as such only if they are the subject of orders or only if they have been--or are to be treated by virtue of an international convention as having been--registered by the Office.

(2) Foreign appellations of origin may be registered by the Office only where an international convention or a law applying such a convention so provides.

(3) In the absence of an order, appellations of origin that are not registered--or to be treated as registered by virtue of an international convention--shall be protected as indications of source.

Section V: Exclusion from Protection

With the exception of appellations protected on the basis of an order, the following shall not be protected as appellations of origin:

(a) appellations which do not correspond to the definition in Section I (a);

(b) appellations which are contrary to morality or public order and those which, in particular, are liable to deceive the public as to the nature, the source, the manufacturing process, the characteristic qualities, or the suitability for their purpose, of the goods concerned;

[(c) appellations which are generic names of products, a name being understood as generic from the time when it is generally considered as such by experts on the subject and by the general public].

CHAPTER II: ORDERS

Section VI: Orders

(1) The orders relating to the protection of appellations of origin shall be issued by the [national authority] and published in the [official publication].

(2) Each order shall state:

(a) the appellation or appellations of origin concerned;

(b) in the case of each such appellation of origin--

(i) the geographical area to which the appellation applies;

(ii) the products for which the appellation is used, in terms sufficiently precise to show, in particular, whether the products are raw materials, semi-finished products or finished products;

(iii) where feasible, the essential characteristic qualities of the products for which the appellation is used.

(iv) the date of commencement of protection.

CHAPTER III: REGISTRATION PROCEDURE

Section VII: Right to File Application

The following shall have the right to file an application with the Office:

- (a) natural persons or legal entities carrying on an activity as a producer in the geographical area specified in the application, with respect to the products specified in the application, as well as groups of such persons;
- (b) groups of consumers;
- (c) any competent authority.

Section VIII: Contents of Application

(1) The application shall specify:

- (a) the name, address and nationality of the natural person or legal entity filing the application, and the capacity in which the applicant is applying for registration;
- (b) the appellation for which registration is sought;
- (c) the geographical area to which the appellation applies;
- (d) the products for which the appellation is used, in terms sufficiently precise to show, in particular, whether the products are raw materials, semi-finished products or finished products;
- (e) where feasible, the essential characteristic qualities of the products for which the appellation is used.

(2) The details of the application of this Section shall be fixed by the Rules.

Section IX: Fees

The Rules may prescribe fees for the filing of an application and for the registration of an appellation of origin.

Section X: Examination of Application with
Respect to Right to File and as to Form

(1) The Office shall examine whether the applicant has the right to apply for registration, whether the application contains the particulars required under Section VIII, and whether the fees, where prescribed, have been paid.

(2) Where the applicant does not have the right to apply for registration, the application shall be rejected.

(3) Where the application does not contain the particulars required under Section VIII or where the prescribed fees have not been paid, the Office shall allow the applicant time to remedy the defect. Where the application is not rectified in time, it shall be rejected.

Section XI: Examination of Application
with Respect to Substance; Invitation for
Opposition; Registration of Appellation
of Origin

(1) Where the examination provided for in Section X shows, if necessary after Section X(3) has been applied, that the application satisfies the requirements of Sections VII to IX, the Office shall proceed to the examination of the application as to its substance, in order to determine:

(a) whether the appellation filed is eligible for protection having regard to Section V;

(b) whether the appellation filed covers the whole of the geographical area specified in the application;

(c) whether the appellation filed covers all the products specified in the application;

(d) whether the products' essential characteristic qualities, as specified in the application, are sufficient.

(2) Where the Office considers that any of the requirements in the preceding subsection has or have not been fulfilled, it shall notify the applicant accordingly, stating the grounds on which the application appears unacceptable and giving the applicant a time limit of three months from the date of notification in which to submit his observations or to restrict or withdraw his application. Where the applicant does not reply within the time limit prescribed or where the application is not withdrawn and the Office considers, notwithstanding the applicant's observations or a restriction of the application, that registration should be refused, the application shall be rejected. Where however the Office considers that the application, or the application as restricted, should be accepted, subsection (3) shall apply.

(3) Where the Office considers, if necessary after subsection (2) has been applied, that all the requirements in subsection (1) have been fulfilled, it shall publish the application.

(4) Where any person showing a legitimate interest or any competent authority considers that any of the requirements in subsection (1)(a) to (d) has or have not been fulfilled, he or it may give notice of opposition to such registration within three months from the date of publication of the

application. The opposition, which shall be addressed to the Office, shall be in writing and shall state the grounds on which it is based. The Rules may provide that opposition shall be admissible only upon payment of an opposition fee.

(5) In the event of opposition the Office shall notify the applicant, identifying the opponent and stating the grounds, and shall give the applicant a time limit of three months from the date of notification in which to submit his observations or to restrict or withdraw his application. On the expiration of the time limit, the Office shall decide on the opposition, notify its decision to the applicant and the opponent and either register the appellation of origin or reject the application.

(6) Where no opposition is lodged within the time limit prescribed in subsection (4), the appellation of origin shall be registered.

(7) Upon a request showing cause, the Office may grant a reasonable extension of any time limit prescribed in this Section.

(8) The details of the application of this Section shall be fixed by the Rules.

Section XII: Contents of Register and
Consultation thereof: Publication of
Registered Appellations of Origin

(1) The Office shall maintain a Register in which appellations of origin shall be registered.

(2) All the contents of the application, or the application as restricted in accordance with Section XI(2), shall be registered.

(3) The Office shall notify the applicant of the registration effected and publish it.

(4) The Register may be consulted free of charge. Any person may obtain extracts therefrom at his own expense.

(5) The details of the application of this Section shall be fixed by the Rules.

Section XIII: Appeals against Final
Decisions of Office

(1) Any person showing a legitimate interest or any competent authority may appeal against a final decision of the Office to the [...] court of the place where the Office is located, under the conditions prescribed in Section XIX(2).

(2) The Office shall inform the applicant of appeals and the judgments thereon, except where it was the applicant who lodged the appeal, and shall publish them.

(3) When a judgment ordering an appellation of origin to be registered becomes final, a copy shall be transmitted to the Office, which shall register and publish the appellation of origin.

Section XIV: Cancellation and
Rectification of Registration

(1) Any person showing a legitimate interest or any competent authority may request the court to order:

(a) the cancellation of a registration of an appellation of origin on the ground that it is ineligible for protection as such having regard to Section V;

(b) the rectification of a registration of an appellation of origin on the ground that the geographical area specified in the registration does not correspond to the appellation of origin, or that the indication of the products for which the appellation of origin is used or the indication of the essential characteristic qualities of such products is unsatisfactory.

(2) The application for cancellation or rectification of the registration shall state:

- (a) the applicant's name, address and nationality;
- (b) the registration whose cancellation or rectification is sought;
- (c) the cancellation or rectification sought;
- (d) the grounds on which cancellation or rectification is sought.

(3) The application for cancellation or rectification of the registration shall be published and potential objectors shall be invited by a public notification to come forward, within three months from the date of the notification, and inform the court of their desire to oppose the application.

(4) The following may be objectors:

- (a) persons having the right to use the appellation of origin under Section XV(1) and (2), as well as groups of such persons;
- (b) groups of consumers;
- (c) any competent authority.

(5) Where no objector within the meaning of the preceding subsection has come forward in time in accordance with subsection (3), the court shall decide the application

for cancellation or rectification of the registration without being obliged to examine its merits.

(6) Where an objector or objectors within the meaning of subsection (4) come forward in time in accordance with subsection (3), the court shall examine the merits of the application for cancellation or rectification of the registration, and shall decide such application.

(7) The judgment ordering cancellation or rectification of a registration shall specify the date on which the relief granted is to take effect; such date may be earlier than the date of the judgment.

(8) When the judgment ordering cancellation or rectification of a registration has become final, a copy thereof shall be transmitted to the Office, which shall cancel or amend the registration in accordance with the judgment and shall publish such cancellation or amendment. Even before the Office has taken such measures, any person showing a legitimate interest may act in reliance upon the judgment.

CHAPTER IV: RIGHT TO USE APPELLATION OF ORIGIN
PROTECTED BY ORDER OR REGISTERED; SANCTIONS
AGAINST UNLAWFUL USE

Section XV: Right of Use

(1) Subject to subsections (2) and (3), only producers carrying on their activity in the geographical area specified in the order or in the Register shall have the right to use, in the course of trade and with respect to the products specified in the order or in the Register, an appellation of origin protected by an order or registered, provided that

the products referred to possess the essential characteristic qualities specified in the order or in the Register.

(2) When, in the conditions defined in the preceding subsection, products have been put on the market under an appellation of origin protected by an order or registered, any person shall have the right to use the appellation of origin for those products.

(3) (a) In the order, producers who do not fall within the scope of subsection (1) and who were, in good faith, using the appellation of origin before it was protected may be granted permission to continue to use the appellation of origin during a period to be fixed in the order and not exceeding two years counted from the order's entry into effect.

(b) Where, before its registration, an appellation of origin was being used in good faith by producers not falling within the scope of subsection (1), the Office may, at the request of such producers, grant them permission to continue to use the appellation of origin during a period to be fixed by the Office and not exceeding two years counted from the registration concerned. The grant of permission shall be registered and published by the Office.

(c) When the producers referred to in paragraphs (a) and (b) have put products on the market under the appellation of origin, any person shall have the right to use the appellation of origin for those products until the end of the period of permission.

(4) Apart from the cases mentioned in the three preceding subsections, it shall be unlawful to use, in the course of trade, an appellation of origin protected by an order or registered, or a similar name, with respect to the products specified in the order or in the Register, or similar products,

even if the true origin of the products is indicated or if the appellation is in the form of a translation or is accompanied by terms such as "kind," "type," "make," "imitation," or the like.

(5) The [national authority] may order that the quality of products put on the market under an appellation of origin protected by an order or registered shall be subject to control and that the use of such an appellation for products of inferior quality shall be unlawful. The order shall specify the authority competent to exercise such control and to declare the use of an appellation of origin to be unlawful; the relevant procedure shall be laid down in the order.

Section XVI: Civil Sanctions

(1) Any interested person and any interested group of producers or consumers may bring proceedings to obtain the relief provided for in subsection (2) against persons making unlawful use, within the meaning of Section XV(4), of an appellation of origin protected by an order or registered and against persons who are parties to such use.

(2) Without prejudice to subsection (3), the courts shall issue an injunction to prohibit the unlawful use, within the meaning of Section XV(4), of an appellation of origin protected by an order or registered, where such use is actually being carried on or is imminent, and shall order the destruction of labels and other documents which have contributed or are likely to contribute to such unlawful use.

(3) Any person who has suffered damage as a result of the unlawful use, within the meaning of Section XV(4), of an appellation or origin protected by an order or registered

shall be entitled to compensation from the person making unlawful use of the appellation and persons who are parties to such use.

Section XVII: Penal Sanctions

Anyone intentionally making unlawful use, within the meaning of Section XV(4), of an appellation of origin protected by an order or registered shall be liable to a fine of not less than ... and not more than ... or to imprisonment for a term of not less than ... and not more than ..., or to both such fine and such imprisonment.

PART III: INDICATIONS OF SOURCE

Section XVIII: Unlawful Use of Indication of Source

(1) The direct or indirect use of an indication of source which is false or which is likely to mislead the public shall be unlawful.

(2) Sections XVI and XVII shall apply.

PART IV: COMPETENCE OF COURTS; RULES

Section XIX: Competence of Courts

(1) The ordinary courts shall be competent to deal with all litigation concerning the application of Sections XVI to XVIII.

(2) The decisions of the courts shall be subject to appeal, annulment or revision, according to the general rules of procedure.

Section XX: Rules

The [national authority] shall issue the Rules, prescribing the details of application of this Law, particularly in regard to Sections IX, XI(8) and XII(5).

PART V: FINAL AND TRANSITIONAL PROVISIONS

Section XXI: Final and Transitional Provisions

- (1) This law shall enter into force on ...
- (2) The following are hereby repealed ...
- (3) Appellations of origin protected under [previous law] shall continue to be protected under that Law.

**LIST OF PARTICIPANTS
IN THE
MODEL LAW COMMITTEE**

LIST OF PARTICIPANTS
IN THE COMMITTEE OF EXPERTS
ON A MODEL LAW FOR DEVELOPING COUNTRIES
ON APPELLATIONS OF ORIGIN AND INDICATIONS OF SOURCE

(Geneva, April 9 to 13, 1973)

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