

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

**Thirty-First Session
Geneva, March 17 to 21, 2014**

REPORT

*adopted by the Standing Committee**

INTRODUCTION

1. The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as “the Standing Committee” or “the SCT”) held its thirty-first session, in Geneva, from March 17 to 21, 2014.

2. The following Member States of WIPO and/or the Paris Union for the Protection of Industrial Property were represented at the meeting: Andorra, Angola, Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Benin, Brazil, Burkina Faso, Burundi, Canada, Chile, China, Colombia, Congo, Costa Rica, Czech Republic, Democratic People’s Republic of Korea, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, France, Georgia, Germany, Ghana, Greece, Guatemala, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Latvia, Lebanon, Libya, Lithuania, Madagascar, Malaysia, Mauritania, Mexico, Morocco, Netherlands, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, the former Yugoslav Republic of

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

Macedonia, Thailand, Togo, Turkey, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Venezuela (Bolivarian Republic of), Yemen, Zimbabwe (88). The European Union was represented in its capacity as a special member of the SCT.

3. The following intergovernmental organizations took part in the meeting in an observer capacity: African Regional Intellectual Property Organization (ARIPO), African Union (AU), Benelux Organization for Intellectual Property (BOIP), World Trade Organization (WTO) (4).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: American Intellectual Property Law Association (AIPLA), *Association française des praticiens du droit des marques et modèles (APRAM)*, *Association Romande de la Propriété Intellectuelle (AROP)*, Centre for International Intellectual Property Studies (CEIPI), International Association for the Protection of Intellectual Property (AIPPI), International Federation of Industrial Property Attorneys (FICPI), International Trademark Association (INTA), Japan Patent Attorneys Association (JPAA), MARQUES (European Association of Trade Mark Owners), Organization for an International Geographical Indications Network (oriGIn) (10).

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

6. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions on the basis of all observations made.

AGENDA ITEM 1: OPENING OF THE SESSION

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

8. Mr. Marcus Höpferger (WIPO) acted as Secretary to the SCT.

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

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

AGENDA ITEM 3: ADOPTION OF THE AGENDA

10. The Delegation of Brazil, on behalf of the Development Agenda Group (DAG), requested that a new Agenda item be added concerning the Contribution of the SCT to the implementation of the respective WIPO Development Agenda Recommendations. The Delegation noted that the request was made in implementation of the General Assembly resolution under the coordination mechanism, namely: “to instruct the relevant WIPO bodies to include in their annual report to the Assemblies a description of their contribution to the implementation of the respective Development Agenda Recommendations”; and “to instruct the relevant WIPO bodies to identify the ways in which the Development Agenda Recommendations are being mainstreamed in their work, and urge them to implement the Recommendations accordingly”. In addition, the Delegation recalled that this request was consistent with the best practices of WIPO Committees.

11. The Delegation of Japan, on behalf of the Group B supported the inclusion of this new

item, on the understanding that it would not be a standing or permanent Agenda item and it would be conducted as previously in the SCT.

12. The SCT adopted the revised draft Agenda (document SCT/31/1 Prov.2) with the addition of one item entitled "Contribution of the SCT to the implementation of the respective WIPO Development Agenda Recommendations".

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE THIRTIETH SESSION

13. The SCT adopted the draft report of the thirtieth session (document SCT/30/9 Prov.).

AGENDA ITEM 5: INDUSTRIAL DESIGNS

General Statements

14. The Delegation of Kenya, on behalf of the African Group, expressed the view that one of the important Agenda items before the SCT was the analysis of the draft Articles and Regulations on design registration formalities. The Delegation said that the African Group believed in the development of a balanced intellectual property system which meets the needs of all its members. Furthermore, the Group also recognized the critical role that intellectual property can play in meeting its development challenges. For this, to become a reality, there was a need to balance the needs of the right holders and societal interests, which had to be reflected in the norm-setting activities. The Delegation said that the African Group was, therefore committed to the process and hoped that the SCT would achieve a balanced outcome. The Delegation indicated that a balanced outcome was critical as it would make the treaty attractive to both developing and developed countries alike, by allowing its early entry into force. In this regard, the African Group regretted that its humble request for inclusion of an article on technical assistance to implement the proposed Design Law Treaty (DLT) had not borne fruit and had been the subject of intense negotiations in the last sessions of the SCT and the General Assembly. The Group also noted that while formalities or procedural treaties did not deal with the substantive subject matter of those treaties, their ultimate aim was to help in the implementation of treaties which were of substantive nature. In this regard, formalities or procedural treaties had a harmonizing effect implying that for the parties to benefit from such treaties they had to upgrade their systems and capacities to more or less the same level of other parties, and to ensure the uniform application of formalities. Furthermore, the Delegation said that the Group believed that procedural treaties reduced the policy space for developing countries and the flexibilities available under the intellectual property system to tailor their national intellectual property system including registration procedures according to their national needs and level of development. The Group underscored the importance of the costs associated with the implementation of procedural treaties, particularly for Member States which did not have the systems in place or those that had to make substantial adjustments to their systems in order to enable the seamless implementation of the treaties. In this regard, the Group believed that it was important for developing countries, particularly those in Africa, to be assured adequate and appropriate technical assistance to implement the treaties. The African Group noted that while the proposed DLT would enter into force for those members who accede to it, it was also true that were developing countries that were planning their accession to WTO. This included a number of African countries, amongst them Developing and Least Developed Countries (LDCs), which were in the process of negotiating accession to some WIPO treaties which were of interest to certain WTO members as part of the concessions to be agreed. In addition, the African Group considered that in their negotiation of free trade agreements or economic partnership agreements with developed countries, developing countries were sometimes compelled to ratify WIPO treaties of interest to the developed countries concerned.

The Group held the view that, there had been a rise in procedural treaties, including the recently concluded Trade Facilitation Agreement under the WTO. These treaties, when taken as a whole posed a big burden, particularly to developing countries since they had to not only meet their treaty obligations under WIPO agreements but also under other treaties they adhere to. In addition, the Group held that, in order to make the system manageable, it was important to ensure the internal balance within the treaties themselves, especially those of a procedural nature, as they involve substantial costs in the implementation. The Group underscored that there were many hidden costs, some of which could not be fully contemplated, given that each country was unique and its intellectual property system was also at a different level of development. In conclusion, the African Group emphasized that the adoption of the proposed DTL would require significant changes in the national intellectual property systems of developing countries, beyond the capacity and ability of individual countries to implement the treaty. Therefore, the African Group expressed its strong opinion that an article on technical assistance that would be part of the substantive provisions of the proposed treaty would be more appropriate, as it would introduce balance, thereby guaranteeing that members who accede could get the assistance they need to implement it.

15. The Delegation of Japan, on behalf of Group B, reiterated the importance it attaches to the activities of the Committee. The Delegation recalled that the last extraordinary session of the General Assembly in December 2013, was very close to reaching a decision to convene the Diplomatic Conference in 2014 for the adoption of a DLT and expressed its thanks to the facilitation of Mr. Marcelo Della Nina from the Permanent Mission of Brazil, and the constructive engagement of Member States during that session. The Delegation said that Group B hoped that the *momentum* which had emerged would be maintained throughout the current session of the SCT and that the Committee would be able to give the finishing touch to this work in a constructive spirit. The Delegation underscored that the Group had repeatedly emphasized that the text of the DLT, namely Industrial Design Law and Practice - Draft Articles (document SCT/31/2) and Draft Regulations (document SCT/31/3), would streamline and enhance design registration formalities and procedures, which in turn would benefit users of the intellectual property system, irrespective of their state of development. The Delegation emphasized that Group B strongly believed that its active engagement in the exercise relating to technical assistance provisions had demonstrated its strong commitment to this process, and the great importance that the Group attached to the technical assistance and capacity building activities that will be provided for implementing the treaty. The Delegation declared that Group B was open to continuing discussions and work, during the week, on the possible contents of the technical assistance provisions. The Delegation stated that the work already accomplished should allow moving to the next phase in a timely manner. The Delegation underlined that Group B was ready to move to the next phase, namely the diplomatic conference to adopt the DLT. The Delegation stated that Member States of WIPO had the responsibility to respond to the expectations and demands of users, who significantly contributed to WIPO's financial basis by improving intellectual property systems. The Delegation invited the Committee to engage in the negotiation keeping that principle in mind. In addition, the Delegation stated that the issue relating to technical assistance should not prevent the Committee from bringing a mature text to the diplomatic conference. The delay of the decision caused by that issue would delay the benefits for users of the intellectual property system. The Delegation of Japan, on behalf of the Group B, expressed its full support to the Chair and its commitment to work in a constructive spirit during this SCT session.

16. The Delegation of Belarus, on behalf of the countries of the group of Caucasian, Central Asian and Eastern European Countries (CACEEC), expressed the wish to make the best use of the time of this session for substantive discussions. The Delegation stated that this session was important as it would define the ability of the Committee to make progress, to overcome contradictions and procedural questions and to reach a positive result. The Delegation expressed great disappointment that in many meetings during the 2013 General Assembly, no agreement to convene a diplomatic conference and no agreement on the Treaty were achieved.

The Delegation stated that the Committee must make efforts to achieve and reach a consensus on this issue. The Delegation further hoped that the work of the SCT would be conducive to achieve substantive results and to make a recommendation to the Assembly to hold a diplomatic conference on this subject.

17. The Delegation of Bangladesh, on behalf of the Asia-Pacific Group, declared the engagement of the Group to move forward the work of the SCT, one of the most important committees of WIPO. The Delegation also thanked the Secretariat for the managerial, logistic support and preparation of documents for this session. The Delegation said that the members of the Asia-Pacific Group recognized that the work done so far in the Committee on the proposed DLT should constitute the basis of the negotiations. The Delegation recalled that the 23rd extraordinary session of the General Assembly mandated the Committee to advance its work in order to include the best proposals for a treaty on industrial designs, by providing appropriate provisions on technical assistance and capacity building, in particular for LDCs to be able to implement the future DLT. The Delegation urged the SCT to work out an inclusive draft treaty reflecting the interests of all Member States by taking into account the different levels of development of WIPO members. The Asia-Pacific Group also believed that the implementation of the proposed treaty would entail, in all likelihood, some modifications of the national laws and practices. Consequently, setting up new infrastructures to deal with more applications, building national capacity to manage increased numbers of demands and developing legal skills and training would require substantial technical assistance. The Delegation recalled the proposals presented by the Delegation of the European Union, the African Group and the Delegation of the Republic of Korea, which manifested the significance of the issue of technical assistance in implementing the proposed treaty. The Delegation declared that the absence of a clear article on technical assistance may prevent Developing Countries and LDCs to join the treaty. The Asia-Pacific Group would prefer a clear article on technical assistance and, echoing the views expressed by the Director General, believed that opportunities do not come often, and that all parties concerned should try to reach consensus on this issue. The Delegation was of the view that national flexibilities were essential and should be allowed in the DLT. Further, the Delegation acknowledged and thanked the Delegation of the Russian Federation for proposing to host the diplomatic conference. Regarding the issue of protection of country names, the Delegation thanked the Secretariat for bringing together the study. The Delegation took note of the important findings contained in the study and hoped that the discussion on this issue in order to provide more protection to country names would continue. Regarding the proposal of the Delegation of the United States of America on the future program of the Committee in relation to geographical indications, the Delegation stated that the members of the Asia-Pacific Group were still in process of examining it and they would revert to the Committee once they conclude their examination. In conclusion, the Delegation said that the members of the Asia-Pacific Group would engage actively in the discussions on all of the issues on the agenda and individual members would intervene on specific issues.

18. The Delegation of the Czech Republic, on behalf of the Group of Central European and Baltic States (CEBS), expressed its gratitude to the Secretariat for the documents prepared for this session, especially working documents SCT/31/2 and SCT/31/3 respectively on Industrial Design Law and Practice - Draft Articles and Draft Regulations. The Delegation said that the CEBS Group firmly believed that the SCT would carry out the task given to it by the General Assembly and would successfully finalize the text of the basic proposal for a DLT. The CEBS Group considered this work and its outcome a priority. The Delegation declared that the CEBS Group commended the valuable work that the Committee had accomplished so far. The Group believed that the draft Articles and Regulations were technically mature and represented a significant step towards approximating and simplifying industrial designs formalities and procedures. Expressing the CEBS Group commitment, the Delegation hoped to reach consensus at the end of the session for recommending to the upcoming extraordinary session of the General Assembly in May to decide convening a diplomatic conference as soon as

possible. The Delegation expressed the commitment of the Group to participate in a constructive and conclusive discussion on the DLT issue. On the country names issue, the Delegation of Czech Republic declared that the CEBS Group was open to continue the discussions with a view to building consensus and achieving an acceptable work program. The Delegation looked forward to an efficient and productive session.

19. The Delegation of Uruguay, speaking on behalf of the Latin America and Caribbean Group (GRULAC) thanked the Secretariat for preparing the documents for consideration by the Committee, particularly those on industrial Design Law and Practice (documents SCT/31/2 and SCT/31/3). The Group recognized the potential benefits of the future treaty for all members and urged the Committee to take into account the various levels of development of different countries as well as the different realities of the various national offices. The Group reiterated the need for the texts to contain provisions which ensure that technical assistance and national institutional capacity building would be provided for developing and least-developed countries, irrespective of how these were set up. The Delegation said that the Group also hoped that the Extraordinary General Assembly in May would reach a consensus on recommending a diplomatic conference for the adoption of the treaty in 2014. In connection with the agenda item on the protection of country names, GRULAC recalled that country names could provide a valuable opportunity for nation branding schemes that bring value through the use of trademarks, especially in the case of developing countries. The Delegation stated that at the twenty-ninth session of the Committee, the Secretariat had presented a study (document SCT/29/5) showing that no consistent protection for country names existed. The GRULAC recalled that at its thirtieth session, the Committee had decided to continue its work on this point and had called all Delegations to submit proposals in writing to the Secretariat. Consequently, the draft text for a possible joint recommendation in relation to the protection of country names against registration and use as trademarks (document SCT/31/4) was submitted to the Committee. The proposal could serve to guide Member States in the process of examination, registration and use of trademarks and to promote a consistent and comprehensive protection of country names. In this connection, GRULAC reaffirmed its support for the discussions and the continuation of work on the protection of country names. The Delegation reiterated that GRULAC expressed its full commitment to the success of this session.

20. The Delegation of China thanked the Secretariat for facilitating the discussions on the DLT and proposed that the SCT reach consensus as soon as possible on articles that had not yet been agreed. The Delegation said that the Committee should find more flexible approaches and stated that the SCT should create a positive environment for the Extraordinary General Assembly in May to decide convening a diplomatic conference this year.

21. The Delegation of the European Union, on behalf of its member states expressed support to successfully conclude the work on the draft design law formalities treaty paving the way for a decision to convene a diplomatic conference towards the end of 2014. The Delegation declared that this goal should be the priority outcome for this session. The Delegation wished to thank the WIPO Secretariat for the preparatory work of the meeting, particularly with regard to working documents SCT/31/2 and SCT/31/3 on Industrial Design Law and Practice - Draft Articles and Draft Regulations. The Delegation emphasized the great importance and added value of harmonizing and simplifying design registration formalities for all users, in particular for small and medium-enterprises (SMEs), the driving force for economic growth in developed and developing countries alike. The Delegation stated that the work of the SCT over the past several years had now borne fruit and looked forward to moving to the next stage as soon as possible. As stated during the last several sessions of the Committee, the Delegation underscored, that the draft Articles and Regulations were technically mature, representing a significant step towards approximating and simplifying industrial design formalities and procedures. The Delegation reiterated that the draft Articles and Regulations were appropriate to establish a flexible and dynamic framework, able to produce design law, capable of keeping

up with future technological socio-economic and cultural changes. Therefore, the Delegation of the European Union and its member states called upon all delegations to act in good faith and characterized the work of this Committee as ready to be submitted to a diplomatic conference. The Delegation was hopeful that the SCT would conclude its work on the DLT by recommending to the upcoming Extraordinary General Assembly in May to convene a diplomatic conference clearly and unambiguously without delay.

22. The Delegation of the Republic of Korea recalled the significant achievements that had been accomplished thus far by the Committee. The Delegation believed that the discussions on the revised draft Articles and rules would need the commitment, cooperation and dedication of all SCT Members. The 2013 edition of the *World Intellectual Property Indicators* showed that industrial design filings grew globally by 17 per cent in 2011, comparatively higher than the growth of patent filings by nine per cent, and trademark filings by six per cent during the same period. In particular, applications among middle and low-income countries were counted in the average of 65 per cent of all intellectual property applications worldwide. By contrast, the majority of the patent filing activities had grown in the high-income countries. This data demonstrated that industrial design had become valuable for promoting competition among companies as well as for planning intellectual property strategies for countries, regardless of their economic level. The Delegation believed that the treaty would make the industrial design system much easier to navigate and would help to spread strong economic development and innovation by making intellectual property procedures clearer and simpler for industrial designs. Furthermore, the Delegation underscored that the technical assistance issue should reach consensus due to the constructive dialogue and the spirit of cooperation among Member States during both the thirtieth session of the SCT and the Extraordinary General Assembly held in December 2013. The Delegation looked forward to this spirit being maintained throughout the current thirty-first session and expressed its hope to finalize the plans for holding the diplomatic conference in order to adopt the treaty, at the upcoming Extraordinary WIPO General Assembly in May. In addition, the Delegation expressed appreciation to the Delegation of Jamaica for its proposed Joint Recommendation on country names. As the studies and surveys conducted by the Secretariat had shown, most Member States used a variety of methods for protecting country names in relation to trademarks. The Delegation was open-minded to discussing these issues. Regarding the discussions on geographical indications initiated by the Delegation of the United States of America, the Delegation believed that this issue was valuable in a Committee which deals with Geographical Indications, in relation to matters outside of the Lisbon revision process. The Delegation expressed the view that the feasibility study on an international geographical indications filing system, would be of great benefit in integrating the complicated geographical indication system worldwide. Finally, the Delegation stressed its commitment to finalize the discussions on the DLT and to reach a full consensus on the adoption of the treaty.

23. The Delegation of Brazil stated that the Committee had made significant progress in the negotiations of the DLT. The Delegation noted that even though there were still some essential issues to be resolved, the Committee was moving ahead with the process. The Delegation stated that Brazil was ready to engage constructively in examining all of the alternatives to finalize the text presented and recalled that the work of this committee, as well as the work undertaken in others committees, was to be guided by the recommendations of the Development Agenda. The Delegation underlined that in the DLT negotiations, Recommendations 15 and 21 of the Development Agenda were particularly pertinent. The Delegation informed that the substantial work and discussions for the DLT accomplished in the last sessions and particularly the observations it had made relating to some of the provisions would have consequences on the work of the intellectual property authorities in Brazil. Therefore, the Delegation wished that without prejudging the outcome of the discussions of the Committee, these considerations along with those of all other delegations should be reflected in the text, so that the final draft would be inclusive and transparent. The Delegation also emphasized the relevance of the discussions on technical assistance and cooperation. In conclusion, the Delegation underlined that the potential gains of the DLT for developing

countries and especially for LDCs depended to a great extent, on the provision of effective assistance and stated that the text of the treaty would be the best way to confer the legal certainty that these countries need in order to participate in the desired system.
Industrial Design Law and Practice – Draft Articles and Draft Regulations

24. Discussions were based on documents SCT/31/2 and 3.

Article 2: Applications and Industrial Designs to Which This Treaty Applies

25. The Delegation of the United States of America reiterated the proposal to add “and to divisional applications thereof” at the end of paragraph (1), as reflected in footnote 1, as this language would enhance the clarity of this provision for users.

26. The Chair concluded that the footnote reflecting the proposal by the Delegation of the United States of America would be maintained.

Article 4: Representatives; Address for Service or Address for Correspondence

27. The Delegation of Japan supported the inclusion of the bracketed words in Article 4(2)(b), as adding the words “holder, or other interested person” to subparagraph (b) promoted the user-friendliness of the DLT. Pointing out that the discussion concerned rather a drafting issue, the Delegation expressed the wish to align Article 4(2)(b) with Article 7(2)(a) of the Patent Law Treaty (PLT), which contained an identical provision.

28. The Delegation of the United States of America, lending its support to the intervention made by the Delegation of Japan, said that this issue concerned a drafting consistency change which, if not fixed, could have detrimental effects in the implementation of the treaty.

29. The Delegation of the Russian Federation, expressing its support for the proposal made by the Delegation of Japan, made a comment as to the Russian version of the provision and proposed another translation.

30. The Delegation of Canada aligned itself with the comments made by the Delegations of Japan and the United States of America.

31. The Delegation of India, referring to footnote 8, suggested to add, in Article 4(3), the word “shall” after “in its territory” and before “have an address for service, or an address for correspondence in that territory”. This change would enable it to remove its reservation.

32. The Delegation of China suggested listing the provision in Article 29 (“Reservations”), so as to make a reservation on the said provision.

33. The Delegation of Australia, noting the proposal by the Delegation of India, further proposed to replace, at the end of Article 4(3), the words “in that territory” by “a territory prescribed by the Contracting Party”, as per the wording used in the PLT.

34. The Delegation of the United States of America, recalling that the spirit of this exercise was to try holding reservations and exceptions to the treaty to a minimum, encouraged all delegations to mention any problem they might have, but to use reservations as a last resort, so as to avoid the risk of having a watered-down treaty.

35. The Delegation of Israel requested clarification as to whether there was a conflict between Article 4(3) and Article 5 in so far as the language used in Article 4(3) required, as a condition to

obtain a filing date, that a foreign applicant include a local address for service or correspondence in his/her application. If so, the Delegation wondered whether the filing date could be denied for failure to provide a local address for service or correspondence.

36. In response to the request by the Delegation of Israel, the Secretariat indicated that there was no contradiction between Articles 4 and 5. In order to obtain a filing date, Article 5(1)(a)(iv) required indications allowing the applicant or the applicant's representative, if any, to be contacted, but did not refer to a local, domestic or national address.

37. In response to a question by the Delegation of Venezuela (Bolivarian Republic of), concerning the legal meaning of the address for service or the address for correspondence, the Secretariat recalled that Note 4.10 specified that what constitutes an address for service or for correspondence was a matter for the applicable law of the Contracting Party concerned.

38. The Chair concluded that the brackets in Article 4(2)(b) would be removed and that a correction to the Russian version of Article 4(2)(b) would be made. Concerning Article 4(3), the Chair concluded that the word "shall" would be included in the provision after "in its territory" and that the words "in that territory" would be replaced by "a territory prescribed by the Contracting Party". Finally, as to footnote 8, the reservation by the Delegation of India would be removed and the one expressed by the Delegation of China would be maintained.

Article 5: Filing Date

39. The Delegation of Japan reiterated that the indication of the product was inevitable for countries where a substantive examination of designs was carried out, so as to define the scope of protection on the date of filing. Referring to the statistics contained in document SCT/19/6, which showed that 57 per cent of the countries required the indication of a product to grant a filing date, the Delegation was surprised by the fact that the indication of the product was extracted out of Article 5(1)(a) and considered as a permitted additional requirement under Article 5(2) in square brackets. The Delegation said that it was of vital importance that the indication of the product remain in Article 5(1), as this question dealt with a substantive aspect of a formal requirement.

40. The Delegation of the European Union, on behalf of its member states, recalled that Article 5 was crucial as it defined what information an applicant needed to provide to secure a filing date. As stated in the previous sessions of the SCT and as indicated by users' groups, the majority of designs applicants, typically SMEs, had little knowledge of the intellectual property system. The Delegation's overriding concern was to ensure that applicants filing in other countries could easily secure a filing date. Once a filing date had been secured, time could be given to applicants to deal with additional local requirements, such as those specified in Article 3. The Delegation of the European Union was of the view that the simplest system to secure a filing date was one in which applicants needed to fulfill the same few requirements regardless of the jurisdictions in which they applied. In its opinion, such a system was contained in Article 5(1). The Delegation observed that a system which required an applicant to establish whether additional requirements needed to be complied with depending on the jurisdictions where he/she filed an application would be onerous and less user-friendly and would carry the risk for the applicant to lose his/her rights. While it appreciated that paragraph (2) of Article 5 attempted to reconcile national laws of some Contracting Parties, the Delegation noted that the situation was far from ideal. The Delegation therefore urged all delegations to consider the aim of user-friendliness of the international system and suggested that additional requirements referred to in Article 5(2) be removed from Article 3.

41. The Delegation of the United States of America said that, although a claim constituted an aspect of its substantive examination system so as to understand what the design was and to

determine the rights, similar to the indication of the product as described by the Delegation of Japan, it supported the approach based on a declaration with respect to these items. However, recalling that the filing-date requirements should be of such significance that, without them, it would not be possible for an Office to know “who” filed “what”, the Delegation considered that the requirement of payment of fees was outside the intent of Article 5(2). Therefore, the Delegation of the United States of America suggested removing the payment of the required fees from the provision.

42. The Delegation of Georgia lent its support to the proposal made by the Delegation of the United States of America since, in its view, the payment of fees should not be required for securing a filing date.

43. The Representative of FICPI underlined the importance for users of establishing a filing date easily, given its significance. From a users' perspective, the shortest possible list of requirements, as reflected in Article 5(1), was appropriate. The Representative did not believe that the option for Contracting Parties to mandate additional requirement, as reflected in Article 5(2), and, in particular, to require the payment of fees, was necessary. Referring to the statement made by the Director General of WIPO at the present session of the SCT, the Representative of FICPI recalled that the purpose of the treaty was to establish an international standard of best practices in design filings rather than approximating national laws.

44. The Delegation of the Republic of Korea, expressing its support for the intervention made by the Delegation of Japan and indicating that it was difficult for Contracting Parties to change their laws, said that paragraph (2) of Article 5 was necessary to maintain flexibility as to the filing date.

45. The Delegation of Chile said that the inclusion of paragraph 2 of Article 5 was needed to enable additional requirements that might be required by an Office. The Delegation further said that it was also necessary to include paragraph (c) of paragraph (2).

46. The Delegation of China supported the wording of Article 5, which gave more room for flexibility to Contracting Parties. The Delegation indicated that the wording should take into account the exceptions to the mandatory representation as provided for by Article 4.

47. The Delegation of the United Kingdom, recalling that the treaty intended to give a degree of certainty to the international design registration system, stressed the fact that the requirements for achieving a filing date should be the minimum possible and be within the knowledge of the applicant. Aspects of a design system which were peculiar and non-standardized had no place in the treaty. Referring to the statement made by the Director General of WIPO at the present session of the SCT, the Delegation said that the document aimed at adopting best practices. In its view, best practices demanded a minimum list of requirements. Any of the requirements in Article 5(2) were not within the knowledge of the applicant. As to the payment of fees, the Delegation observed that getting the fees wrong would mean a loss of the filing date and would be catastrophic for designers. As to other information, such as a claim, the Delegation of the United Kingdom noted that it could be part of certain registration systems, but it would be revealing to find out whether the claim meant exactly the same in each of the different systems. To conclude, the Delegation said that too many filing-date requirements would mean that more applicants would lose their rights.

48. The Delegation of Canada lent its support to the statements made by the Delegations of the United States of America and the United Kingdom.

49. The Delegation of Hungary declared that it strongly supported the statement made by the Delegation of the United Kingdom and, by consequence, did not support the inclusion of paragraph (2) of Article 5.

50. The Representative of CEIPI, expressing its support for the statements made by the Delegation of the United Kingdom and the Representative of FICPI, said that the shorter the list, the easier the life of users in filing design applications would be. The Representative indicated that paragraph (2) was drafted in a way that gave the impression that it was rather a transitional provision since Contracting Parties would not be able to apply the requirements mentioned in that paragraph if such requirements were not applied at the time of becoming party to the treaty. The Representative further expressed the view that the payment of the fees should be deleted from paragraph (2) since it had no link with the scope of protection.

51. The Representative of INTA fully endorsed the statement made by the Representative of CEIPI.

52. In response to a request for clarification by the Delegation of Australia, concerning the payment of fees in paragraph (2), the Chair explained that two conditions had to be fulfilled for the payment of fees to apply as a filing-date requirement: the requirement had to be provided in the national law before the time of becoming party to the treaty and it had to be declared. The Chair suggested removing item (iv) of paragraph (2)(b).

53. The Delegation of Canada supported the suggestion by the Chair.

54. The Delegations of India and South Africa indicated that they could not agree with the deletion of item (iv) of paragraph 2(b) since the payment of fees was required by their national law.

55. The Delegation of the United States of America explained that, under its legislation, the fees did not have to be paid at the time of filing to secure a filing date. If the applicant did not pay the fees, the application would be declared abandoned. The Delegation wondered whether such a system would be acceptable for the Delegations of India and South Africa. The Delegation further observed that the payment of fees appeared to be of administrative nature and that there did not seem to be a substantive reason to require such payment upfront so as to understand what the design was and who filed it.

56. The Delegation of South Africa pointed out that, under its national law, if the fee was not paid with the application, no application number could be allocated.

57. The Delegation of Colombia said that, although the applicable law in Colombia currently required the payment of fees to accord a filing date, it could accept the principle that the payment of fees should not be filing-date requirement.

58. The Delegation of the Republic of Moldova recalled that the aim of this work was to set minimum requirements to secure a filing date, so as to know “who” filed “what”.

59. The Chair concluded that Article 5 would remain as it was.

Article 6: Grace Period for Filing in Case of Disclosure

60. The Delegation of China, referring to footnote 12, recalled that its position on the grace period had already been stated during previous sessions of the SCT. The Delegation reiterated that the grace period was a substantive issue and, therefore, of vital importance because it concerned the balance between the public interest and the interest of right holders. The Delegation believed that too broad provisions on the grace period would lead to difficulties for the public in determining whether a disclosed design was in the public domain or not and, thus, would increase the likelihood of disputes, as well as the social costs to solve those disputes. That situation would be therefore detrimental to the public interest and the right holders. The

Delegation also noted that there were no provisions on the grace period in the PLT. In order to breach the differences and promote convergence as soon as possible, the Delegation suggested including this item in the Article *Reservations*.

61. The Delegation of the European Union, on behalf of its member states, recalled that Article 6 had already been discussed extensively during previous sessions of the SCT and was as such acceptable for almost all delegations. Regarding the reservation expressed by the Delegation of China, namely that the grace period be limited to designs disclosed only at certain exhibitions and meetings and in the case of unauthorized disclosure, the Delegation highlighted that this might defeat the effect of a harmonized grace period provision. Applicants taking advantage of the grace period in one country might subsequently find they had prejudiced themselves when filing in China. This could lead to a situation whereby applicants would only take advantage of the grace period in specific circumstances and thus the effect of this provision would be weakened.

62. The Delegation of the United States of America, endorsing the statement made by the Delegation of the European Union, pointed out that Article 29 *Reservations* was empty for the time being and it was too early to presume that there would be even an Article 29 on reservations. The Delegation believed that Article 29 was placed as a potential placeholder if needed, but its strong feeling was that such a reservation would severely water down and undermine the purpose of this provision, which was one of the core provisions of the draft treaty.

63. The Chair concluded that the footnotes to Article 6 would be maintained.

Article 9: Publication of the Industrial Design

Rule 6: Details Concerning Publication

64. The Delegation of the United States of America, referring to footnote 13, recalled that the purpose of its proposal was to clarify the provision with respect to the fact that there were different sources of law. Upon reflection on the text, the Delegation believed that the language was sufficiently flexible to cover its concern, and agreed to remove the footnote.

65. The Delegation of Japan said that it appreciated the successful discussions regarding the postponement of the publication. However, voicing the concerns of Japanese industry, particularly the car industry, the Delegation encouraged the SCT to further enhance the user-friendliness of this provision and proposed to calculate the deferment period from the filing date, not from the priority date.

66. The Chair concluded that footnote 13 on Article 9 would be omitted, and footnote 2 on Rule 6 would be maintained.

Article 11: Renewal

67. The Delegation of Brazil, referring to Article 11(1)(b), stated that the payment of renewal fees should not be understood as curtailing the country's leeway to require the payment of maintenance fees.

Article 12: Relief in Respect of Time Limits

68. The Delegation of India stated that it maintained the reservation regarding the mandatory nature of paragraph (2).

69. The Chair concluded that the footnote to Article 12 would be maintained.

Article 13: Reinstatement of Rights After a Finding by the Office of Due Care or Unintentionality

70. The Delegation of India stated that it maintained the reservation, as reflected in footnote 15.

71. The Delegation of Japan, referring to the expression “*failure has the direct consequence of causing a loss of rights with respect to an application or a registration*” in paragraph (1), proposed to introduce an explanatory note similar to PLT explanatory note 12.02.

72. The Delegation of Australia wondered whether the reservation by the Delegation of India, as reflected in the footnote, could be addressed by replacing “shall” by “may” in paragraph (1).

73. The Chair concluded that footnote 15 would be maintained to reflect the reservation by the Delegation of India and that a note would be added to clarify the term “direct loss of right” in Article 13(1).

Article 14: Correction of Addition of Priority Claim; Restoration of Priority Right

74. The Delegation of India, referring to Article 14(2), stated that it maintained the reservation, as reflected in footnote 17.

75. The Chair concluded that footnote 17 would be maintained to reflect the reservation by the Delegation of India.

Article 15: Request for Recording of a License or a Security Interest

Article 16: Request for Amendment or Cancellation of the Recording of a License or a Security Interest

76. The Delegation of Brazil explained that, by referring to specific examples, the added language in subparagraph (b) aimed at giving more clarity to this provision.

77. The Delegation of Indonesia recalled that national law required the parties to a license to furnish information in accordance with competition and anti-monopoly law.

78. The Delegation of the United States of America, while expressing understanding for the concerns expressed by the Delegations of Brazil and Indonesia, believed that note 15.05 was self-explanatory and hoped that it could satisfy those concerns. The Delegation expressed the view that, from a drafting perspective, the inclusion of the bracketed words seemed to be redundant and perhaps more confusing than clarifying. The Delegation therefore suggested to leave the bracketed language out and to further reinforce the note, if considered unclear.

79. The Delegation of Japan supported the proposal made by the Delegation of Brazil and proposed to add a note similar to Note 15.05 with respect to Article 10.

80. The Delegation of Canada expressed its support for the statement made by the Delegation of the United States of America.

81. The Delegation of Japan, stating its support for the exception provided in Article 15(7) through a reference to paragraph (4)(a)(ii) of the same Article suggested that the same exception be made in Article 16(3).

82. The Delegation of the Russian Federation, noting that paragraph (6) of Article 15 was not referred to in Article 16(3), said that, if the applicable law of a Contracting Party provided for the recording of a license or a security interest, it would also need to provide for the possibility to amend or cancel those recordings. Therefore, the Delegation proposed to replace the reference to Article 15(2) to (5) by a reference to Article 15(2) to (7) in Article 16(3).

83. The Chair concluded that the reference in Article 16(3) would be amended in accordance with the proposals by the Delegations of Japan and the Russian Federation.

Article 17: Effects of the Non-Recording of a License

84. The Delegation of Brazil said that it was in favor of keeping the option for Contracting Parties to require the recording of the license as a condition for allowing the licensee to join infringement proceedings.

85. The Delegation of Norway, highlighting the fact that the deletion of the word "not" would make the second paragraph superfluous, expressed its support for maintaining the word "not".

86. The Delegation of the United States of America, expressing its support for the statement made by the Delegation of Norway, suggested removing the brackets in the provision and aligning it with the Singapore Treaty.

87. The Delegations of Australia and Canada aligned themselves with the statements made by the Delegations of Norway and the United States of America.

88. The Delegation of Japan supported maintaining the word "not" and deleting the brackets in Article 17(2) in the spirit of harmonization and user-friendliness. The Delegation preferred not to stipulate provisions concerning judicial procedures or any other neighboring actions and conditions because it was understood that the DLT would not cover such procedures.

89. The Delegation of Pakistan supported the option of deleting the word "not".

90. The Delegation of the United Kingdom observed that if the word "not" were to be deleted from the provision, the entire paragraph might as well be deleted, as it would serve no purpose.

91. The Delegation of Singapore said that it saw value in having a provision that mirrored the corresponding provision in the STLT, as this provided applicants with a consistent and clear picture of how licenses were handled across the different types of intellectual property.

92. The Representative of CEIPI, endorsing the argument put forward by the Delegation of Singapore, said that it failed to understand why there would be different Regulations for licenses on industrial designs and on trademarks. Such differences could create confusion in the minds of users.

93. The Delegation of Chile, endorsing the statements made by the Delegations of Brazil and Pakistan in favor of deleting the word “not”, pointed out that Article 29(4) of the Singapore Treaty allowed Contracting Parties to make reservations in this respect.

94. The Delegation of Venezuela (Bolivarian Republic of) wondered whether the problem could be solved by replacing the words “may not” by the verb “could” in Article 17(2), which would give more flexibility to Contracting Parties.

95. The Chair noted that some delegations supported this Article with a wording similar to that of the Singapore Treaty, whereas other delegations preferred the possibility to make reservations to that article. The Chair concluded that the brackets to paragraph (2) would be removed. The brackets to the word “not” would be maintained with an indication in a footnote, of the delegation that expressed the wish to suppress the word “not”.

Article 19: Changes in Names or Addresses

96. The Delegation of India said that it wished to maintain its reservation to this article.

97. The Chair concluded that the reservation by the Delegation of India would be maintained and reflected in a footnote.

Article 23: Regulations

98. The Delegations of Canada and the United States of America wondered what would be the purpose of the forms.

99. The Secretariat recalled that, at the thirtieth session, a number of delegations had suggested that the establishment of model international forms be anticipated in one way or the other. The use of model forms by Contracting Parties would be voluntary. The forms would be intended to help countries that became Contracting Parties to implement the provisions of the treaty, as it was understood that the content of the model international forms was necessarily limited to what was prescribed by the provisions. The Secretariat recalled that something similar had been done in the framework of the Singapore Treaty, which had proved to be very useful in its dynamic setup, as the Assembly of the Singapore Treaty had the possibility to amend the Regulations and the related Model International Forms.

100. The Delegation of the United States of America, supported by the Delegation of Canada, suggested to keep Article 23(1)(b) in brackets for the time being.

101. The Chair concluded that the brackets would be maintained.

Article 28: Entry into Force; Effective Date of Ratifications and Accessions

102. The Chair, noting that there were no comments on this Article, suggested that the decision on the options proposed take place at a later stage in the discussion towards a treaty and that the brackets be therefore maintained for the time being.

[Article 22] [Resolution] Technical Assistance and Capacity Building

103. The Delegation of Kenya, on behalf of the African Group, reiterating its preference for an article instead of a resolution in the treaty, added that it would like the word "resolution" to be deleted. In the Delegation's view, providing for the obligation to give technical assistance in different sets of rules did not go along the lines of harmonization. Therefore, the Delegation underscored the importance of not having the provisions on the reduction of fees and on the exchange of information separate from the technical assistance provision.

104. The Delegation of the European Union, on behalf of its member states, continued to believe that a resolution fully addressed and safeguarded the interests of developing and LDCs with regards to technical assistance and capacity building in the implementation of the treaty. However, in a spirit of cooperation and flexibility and as a public statement of its ongoing support and contribution to the Development Agenda, the Delegation stated that it was prepared to accept an article on technical assistance, provided that its provisions were right and did not unduly burden the Organization or the Contracting Parties to the treaty. In this regard, the Delegation had several comments in relation to the draft Article 22 as presented. With regard to Article 22(1), the Delegation observed that a design treaty could not place burden on WIPO which would cause it to operate outside the envelope of its current resources. With regard to Article 22(2), the Delegation believed that option 1 would be an appropriate reference to the financing of technical assistance. Calling for a separate committee on technical assistance would only detract from the WIPO budget funds, which might be more properly spent *in situ*, in the countries that were recipients of technical assistance. With regard to Article 22(3), the Delegation believed that option 1 would be an appropriate clause for dealing with participation in the assembly and would align with the current WIPO practice. Indicating that WIPO was already financing the participation of delegates in relation to the PCT and Madrid systems, the Delegation said that it was not customary WIPO practice to finance delegations attending the assemblies in relation to a formalities treaty and that the added value of this approach was unclear. With regard to Article 22(4), the Delegation underscored the fact that this paragraph had nothing to do with the targeted and needs-based assistance to implement the treaty and was a quite separate matter. The Delegation believed that fees were a matter for each Contracting Party to determine and should not be prescribed by this treaty. Prescribing fees would lead to a situation whereby the Contracting Party would provide design registrations at a loss. Furthermore, the Delegation did not think that such a system was practical or would achieve its desired ends and it was unclear whether it would also apply to wealthy local businesses as well as foreign multinational companies based in developing countries. There was also the question about the compatibility of such a provision with the "most favored nation" principle in WTO Trade Rules.

105. The Delegation of the Czech Republic, on behalf of the CEBS Group, reiterated its flexibility on the inclusion of an article on technical assistance and capacity building for the implementation of the future DLT in the text of the treaty itself. The Delegation considered that this element was the last step on the way to a successful outcome, which for its delegation would be represented only by convening a diplomatic conference. The Delegation further said that it shared some concerns expressed by the European Union and its member states and other delegations, particularly those related to the proposal of special and differential fees to be charged to applicants from developing and LDCs. It added that technical assistance should be directly linked to the implementation of the DLT. Therefore, the Delegation associated itself with the opinion that the issue of fee reduction did not relate to technical assistance or capacity building and might establish a discriminatory practice which would raise questions on its conformity with the TRIPS Agreement. As regards paragraphs 2 and 3 of the draft Article 22, the Delegation also shared the view that option 1 in both cases was appropriate. The Delegation finally expressed its hope that it would be possible to reach consensus on this issue during this session.

106. At the issue of informal consultations, the Chair presented a draft revised text for *[Article 22] [Resolution] Technical Assistance and Capacity Building* (Chair Non-paper No. 1.), which was the outcome of the informal discussions regarding technical assistance and capacity building. The Chair proposed to discuss this new draft Article/Resolution.

107. The Delegation of Kenya, on behalf of the African Group, reiterated its request that the word "resolution" be deleted from the title of this provision. Since the Delegation did not hear any opposition to this, it suggested that the request be reflected.

108. The Delegations of Canada and the United States of America said that they opposed to the deletion of the word "resolution".

109. The Delegation of Kenya, on behalf of the African Group, said that it reserved its right to introduce language suggestions in other articles to reflect the current state of play in some of those provisions and to ensure a balance of interests.

110. The Delegation of South Africa, recalling its long-standing position in support for an "article" instead of a "resolution", added that as much as the Committee might work on the content of this provision, as mandated by the General Assembly in December, any movement forward was dependent upon the outcome of the issue regarding the use of the words "article" or "resolution".

111. At the issue of informal consultations regarding technical assistance and capacity building, the Chair presented a new draft revised text for *[Article 22] [Resolution] Technical Assistance and Capacity Building* (Chair Non-paper No. 2.). The Chair further observed that Article 24 had also been discussed during the course of the discussions and the proposed amendments were presented in the Chair Non-paper No. 2.

112. The Delegation of the Czech Republic, on behalf of the CEBS Group, expressed its satisfaction with the progress achieved and the outcome of the informal consultations that had taken place in the course of this week on the issue of technical assistance and capacity building. The Delegation, despite the fact that there were still several elements that required a last push of good will during negotiations, reiterated its group's position, which was even strengthened, that the SCT should recommend to the General Assembly in May to convene a diplomatic conference to conclude a DLT.

113. The Delegation of Kenya, on behalf of the African Group, thanked all the delegations for their constructive spirit during the informal consultations. The Delegation, observing that the Committee was much nearer to the final goal, said that some questions should however be resolved, such as the final form of this provision, before going to the diplomatic conference. In this regard, the African Group reserved its right to make changes in other articles depending on the final form this provision would take.

114. The Delegation of Bangladesh, on behalf of the Asia and Pacific Group, observing that its group members had divergent views on different aspects, stated that they all, more or less, held the same view regarding the choice of an article or a resolution on technical assistance and capacity building. The delegation stated that its group would like to have a legally binding provision, whether it was an article or a resolution.

115. The Delegation of Japan, speaking on behalf of Group B, thanked the Chair for its leadership and constructive spirit which enabled the Committee to make progress. The Delegation considered that through the intensified informal consultation the Committee had achieved very good progress on the technical assistance provisions by strengthening the text and moving some elements to more appropriate places. Furthermore, the Delegation stated that the text related to technical assistance had reached the level of maturity upon which the

diplomatic conference could do its final work. The Delegation, observing that the relationship between the objective of the DLT and other provisions in the text was still an issue for Group B, from the perspective of the principle that DLT should limit its scope to the streamlining of the formalities of design applications and technical assistance to implement the treaty, added that that this point had to be further worked. The Delegation hoped that the achievements through the intensified consultations on technical assistance could lead the Committee to the recommendation, at this session, to convene the diplomatic conference.

116. The Delegation of Canada thanked the Chair for its leadership and appreciated the work that had been done by Member States in a collaborative manner on this issue. The Delegation, urging all Member States to exercise maximum flexibility on the technical assistance issue, noted that the diplomatic conference would ultimately make a decision on the nature of this provision as it was done for the PLT and the Singapore Treaty. However, the Delegation opposed on agreeing to an article prior to, and as a condition for, proceeding to a diplomatic conference, since it considered that this would deeply undermine the normative work of this committee. The Delegation continued to believe that this committee's collaborative efforts would be best spent on other issues rather than on spending considerable time on agreeing to an article or resolution on technical assistance ahead of a diplomatic conference. The Delegation, underlining its flexibility and the considerable goodwill and hard work that had been spent on this instrument over the past months, expressed its full support to the convening of a diplomatic conference for the DLT. The Delegation also reiterated its support for the inclusion of a provision on technical assistance and capacity building in the context of the treaty. The Delegation concluded that its Delegation was open to supporting an article in due time at a diplomatic conference on the condition that some flexibility from other Member States be shown, not only on the progress of the text itself, but also on the recommendation to convene a diplomatic conference.

117. The Delegation of South Africa, observing that its delegation had been very constructive in coming up with solutions to some of the issues that were in progress on technical assistance, said that the African Group had shown maximum flexibility on this provision of technical assistance and, as was previously mentioned by the coordinator of the African Group, after over nine months of work on this particular issue, its position still remained. The Delegation further recalled that at the General Assembly, in December, the delegations almost reached an agreement. The Delegation also observed that the General Assembly gave this Committee a mandate, which was to conclude the work on the basic proposal, and the General Assembly would take stock of progress made and decide on whether to convene a diplomatic conference. Thus, the Delegation called the Committee to respect that mandate. Finally, the Delegation reaffirmed that, for its delegation, the issue of convening a diplomatic conference could not be divorced from the issue of agreeing to an article.

118. The Delegation of Iran (Islamic Republic of), highlighting the good progress made in the negotiations on the DLT text, thanked the Chair for its leadership and constructive role. The Delegation expressed its support for a legally binding article on technical assistance and capacity building whatever the contents of the provision was. Considering the fact that there were still some outstanding issues to be resolved before going to a diplomatic conference, especially those related to technical assistance and capacity building for developing and LDCs on the implementation of the DLT, the Delegation stated that those differences should be successfully settled before taking any decision on convening a diplomatic conference.

119. The Delegation of Algeria, thanking the Chair, the Secretariat and other delegations for their flexibility, said that the Committee had succeeded in submitting a draft Article on technical assistance which was more understandable and went directly to the substance of matters, which would help the Committee to reach a final agreement. The Delegation supported the statements made by the African Group and the Delegation of South Africa and recalled that this Committee's mandate was to ensure that the draft treaty on industrial design made substantial

progress. Referring to the statement made by the Delegation of Canada, the Delegation stated that the issue on an article on technical assistance and capacity building was not a question of conditionality, but rather a question of guarantee, since it was a matter of internal balance of the treaty. Technical assistance and capacity building should have the same level as the other issues provided by the DLT.

120. The Delegation of the United States of America lent its support to the intervention made by the Delegation of Canada with respect to the significant progress that had been made this week. Observing that no delegation had doubted the importance of technical assistance and capacity building during the SCT, the Delegation pointed out that its country was a frequent provider of technical assistance. The Delegation further said that its Delegation had maintained a consistent position on this issue and had expressed maximum flexibility in supporting moving forward, despite its strong preference for a resolution. The Delegation encouraged other delegations to align themselves along with the suggestions made by the Delegation of Canada to continue to move forward in the spirit of flexibility, in order to advance the draft DLT, on which the Committee had spent significant efforts.

121. The Delegation of Brazil thanked the Chair for its guidance in the work of the Committee, especially on the issue of technical assistance. The Delegation reiterated its view that the provisions in this area should be effective and predictable and, in this sense, supported the position of the African Group.

122. The Delegation of Kenya, on behalf of the African Group, reiterated that it wanted to have balance in the text on the subject of technical assistance, since developing countries and LDCs needed guarantees as regards the level of predictability when implementing the DLT. Thus, for the African Group, as long as the final form of the instrument would not be determined, this issue would raise uncertainty for its Group and the Delegation would not agree to saying that the text was sufficiently mature for convening a diplomatic conference.

123. The Delegation of the European Union, on behalf of its member states, thanked the Chair for its hard work and dedication in taking forward the work of this Committee on a draft DLT. In this respect, the Delegation noted the maturity of all provisions of the draft DLT and commended the Chair for the significant improvements achieved on the provisions on technical assistance. The Delegation underlined the fact that this progress had been made possible thanks to the flexibility shown by all. Highlighting the maturity of the draft DLT, the Delegation said that in order to preserve the achievements, the Committee needed to maintain the forward momentum and move to a diplomatic conference. The Delegation further added that the December 2013 Extraordinary General Assembly requested the SCT to finalize its work in order to consolidate the text of the basic proposal for a DLT. As regards technical assistance, the Delegation stated that the European Union remained flexible on whether technical assistance should be included as an article or in a separate provision in the form of a resolution. Whilst the Delegation welcomed the clear consensus on the substantive provisions of this assistance, and said that it was now up to the General Assembly at its extraordinary session in May to take stock of, and consider, the text and decide on convening a diplomatic conference, the Delegation commended the draft text to the General Assembly and called for a positive decision on the convening of a diplomatic conference.

124. The Delegation of Japan, on behalf of Group B, stating that it had no doubt about the consensus regarding the significant progress made with respect to the draft DLT text, considered that the draft text had, as a whole, led to the maturity on which the General Assembly could take a decision on convening a diplomatic conference. Group B further said that it strongly expected that a positive outcome would emerge at the next extraordinary session of the General Assembly.

125. The Delegation of the United States of America thanked all the delegations, especially the African Group, for their engagement and the significant progress that had been made. As regards the declaration made by the Delegation of the African Group, with regard to not knowing how an article or a resolution looked like, the Delegation observed that from a technical perspective, there was no mystery as to the substance of the technical assistance provision, and the two alternative proposals, a resolution or an article, were just a titling perspective.

126. Underlining an evolution in the discussions producing a significant progress on the DLT in the issue of technical assistance, the Delegation of Hungary aligned itself with the statement made by the Delegation of the United States of America. The significant progress made on the substance of this provision was the most important element to permit the General Assembly to take a decision in May. In conclusion, the Delegation thought that the text was now mature to convene a diplomatic conference with a positive result.

127. The Delegation of Spain, stating that the Committee had made major strides forward over these days, said that it was ready to recommend the convening of a diplomatic conference, although there were still some details that had to be negotiated. The Delegation stated that, the fact that the text did not reflect the exact points of view of all delegations was a normal consequence of any negotiation and was not a reason not to convene a diplomatic conference.

128. The Delegation of the United Kingdom declared that it supported the statements made by the Delegations of Hungary, Spain and the European Union highlighting the fact that there was significant progress achieved at this session. The Delegation was of the view that this Committee had fulfilled its mandate and had reached sufficient level of maturity to finalize its work in order to convene a diplomatic conference. While the Delegation understood the concerns about the remaining issue of article versus resolution, such concerns did not mean that the text had not reached a level of maturity sufficient enough to make the next step. Referring to two recent successful negotiations concluded at WIPO, the Beijing Treaty and the Marrakech Treaty, the Delegation underlined the fact that the DLT articles were much more mature, and the level of convergence on those articles was much higher, than in the case of those two treaties at the time of their respective diplomatic conferences. Finally, the Delegation believed that the draft treaty text had reached sufficient level and fulfilled the mandate of this Committee. Therefore the time was now ripe to go to the next level, the diplomatic conference, which would resolve the remaining open issues, in particular the political issues.

129. The Delegation of Egypt lent its support to the statements made by the Delegations of South Africa and the African Group. The Delegation added that the question was whether a resolution or an article was a political or a legal issue. In the case of a political divergence, this could be resolved in the General Assembly at a high level. However, if this issue was a legal or a technical divergence, it should be resolved within this Committee.

130. The Delegation of the European Union, on behalf of its member states, drew the attention of the Committee to document GA/44/2, paragraph 14 which read "concerning the convening of a diplomatic conference for the adoption of a DLT, the Chair noted that all delegations that had taken the floor were in favor of convening such a diplomatic conference". The Delegation very much hoped that the Committee would not move backwards in relation to that statement.

131. The Chair concluded that, with regard to technical assistance and capacity building, all delegations stated that progress was made on this matter. A number of delegations expressed the view that technical assistance provisions had to be in the form of an article. On this particular issue, other delegations said they were flexible. Some other delegations said that, although they preferred a resolution, they would consider an article, but not as a precondition for convening a diplomatic conference.

132. Concerning the convening of a diplomatic conference for the adoption of a DLT, while a number of delegations were of the view that an agreement to address technical assistance in the form of an article in the treaty had to be reached prior to convening such a diplomatic conference, other delegations were of the view that the draft Treaty was mature enough in order to convene a diplomatic conference.

133. The Chair concluded that the SCT had made further progress towards cleaning up the draft DLT and that the WIPO General Assembly, at its extraordinary session in May, will take stock of, and consider the text, progress made and make its decision.

AGENDA ITEM 6: TRADEMARKS

134. Discussion was based on document SCT/31/4.

135. The Delegation of Jamaica recalled that at the twenty-sixth session of the SCT, the Delegations of Barbados and Jamaica proposed a three-phase work plan for the protection of country names. Following a request of those delegations during the twenty-seventh session of the SCT, the Secretariat prepared a study and a draft reference document to determine possible best practices for the protection of country names against registration as trademarks or as elements of trademarks. The findings were submitted to the twenty-ninth session of the SCT. The Delegation of Jamaica submitted detailed observations on that study, which were contained in document SCT/31/5. The results of the study showed that the protection of country names was not uniform across Member States of WIPO. The study was concerned with the fact that registrations might be considered or granted where the use of the country name was neither authorized nor related to a subject matter that had a direct relationship with the relevant country. At its thirtieth session, the SCT decided that work would continue on this agenda item and invited delegations to submit proposals in writing. The Delegation had thus submitted the draft joint recommendation contained in document SCT/31/4, which could guide Member States in trademark examination, in order to promote a consistent and comprehensive treatment towards the protection of country names. Article 2 of the draft encouraged Member States to protect country names where a person used or acquired a right, or filed an application to register a mark in bad faith. The draft joint recommendation also encouraged the protection of country names against conflicting trademarks (Article 3), business identifiers (Article 4) and domain names (Article 5). Articles 6 and 7, respectively, outlined the circumstances in which industrial property offices or other competent authorities should refuse or accept the registration of a mark containing or consisting of a country name. Article 8 proposed that the grounds for refusal of marks containing country names should also apply in opposition and invalidation proceedings. Article 9 provided for liability in Member States when an act of unfair competition or passing-off was committed through the use of the mark. This meant identifiers or domain names consisting of or containing a country name that was misleading, deceptive or false. Finally, Article 10 listed factors to be considered in determining whether the use of a mark, business identifier or domain name consisting of a country name indicated a false connection to the State identified by the country name. As stated previously, the aim of the draft joint recommendation was not to prescribe rules that industrial property offices must follow, nor to create additional obligations, but rather establish a coherent and consistent framework to guide industrial property offices and trademark practitioners in their use of trademarks which consist of or contain country names. Therefore, the Delegation looked forward to a meaningful and constructive engagement on the draft joint recommendation and trusted that it would help advancing the collective approach towards the treatment of applications for registration of trademarks which consisted of or contained country names.

136. The Delegation of Monaco thanked the Delegation of Jamaica for its extremely interesting proposal, which opened up the discussion on a fundamental issue. The Delegation supported the proposal and considered that it could serve as a basis for future work and discussions, and mentioned that it had specific comments on various articles, as well as questions that could be addressed bilaterally.

137. The Delegation of Switzerland also thanked the Delegation of Jamaica for the analysis made of the study contained in document SCT/29/5 Rev., as well as for the proposed joint recommendation on the protection of country names and the explanation provided with it. As noted by the Delegation of Jamaica, the study carried out by the Secretariat clearly showed that national practices in this area were neither uniform nor exhaustive and that the different means implemented to ensure the protection of country names referred to specific circumstances, for instance when the country name was the only element of the mark. These aspects could be overcome by adding distinctive elements or through disclaimers and therefore the registration of marks for products or services had no link with the country mentioned in the mark was allowed. The Delegation said that Switzerland was frequently confronted with this situation and thus supported the analysis presented by the Delegation of Jamaica in document SCT/31/5, and thanked that delegation for its proposal of a joint recommendation concerning provisions relating to the protection of country names, contained in document SCT/31/4. The proposal constituted an excellent basis to continue, in a substantive manner, the work of the SCT on the protection of country names and to identify the relevant means for attaining such protection, a question that had been on the agenda of the SCT for several years. The Delegation considered that the proposed joint recommendation finally offered opportunities to move from the general trademark examination theory to identifying specific and concrete measures that States could implement at the regional or national level, on a voluntary basis, whether through directives or practices in the area of trademarks or by additional judicial or administrative measures. The Delegation trusted that the protection of country names will be made more effective through this process. In addition, the Delegation considered trademark offices as an essential filter in the mechanisms for the protection of country names, as they constituted the entry point for the protection of trademarks through the granting of trademark titles. Indeed, the trademark examination filter was a pragmatic, accessible and affordable option for many countries, including developing countries; but other means, in particular judicial measures, could be added to supplement those options. Among the measures proposed, the Delegation considered that Articles 6 and 7 seemed particularly interesting, as it was important to use country names in relation with products or services that in fact originate from those countries. With the conclusion of the work on designs, the SCT should start work on this issue as a priority at its next session, particularly in view that the preparatory work has already been advanced. The Delegation looked forward to undertaking a detailed review of the various provisions contained in the proposal by the Delegation of Jamaica towards drafting a recommendation that could serve as a guide or reference for States to review, on a voluntary basis, their current practices and Regulations with a view to better handling the protection of country names, given the interest that this issue has raised in the framework of globalized exchanges.

138. The Delegation of European Union, on behalf of its member states, stated that the subject of protection of country names against registration and use as trademarks had been examined in the Committee since 2009, an act which itself had considerably raised the profile of the issue. The Delegation fully understood the interest and importance attached by some States to the protection of country names and their use in national branding initiatives. It also recognized that the use of country names as trademarks in ways which are deceptive or misleading as to the country of origin adversely affected consumers. The Delegation expressed concern not just as to the deceptive and misleading use of country names, but also as to uses of geographical names more broadly. Before initiating work on any joint recommendation in this area, the Delegation considered it necessary to look at the issue from all perspectives, namely, not only from the point of view of States and consumers, but also from the perspective of present users of country names and trademarks, who might legitimately use a country name that had become

well-known or even generic. The Delegation believed that by investigating and taking this question into account, the potential upsetting of legitimately held business practices could be prevented. This notwithstanding, the Delegation considered that awareness raising activities could be usefully undertaken so as to publicize the available mechanisms for the refusal or invalidation of trademarks containing country names. The European Union and its member states looked forward to participating constructively in future discussions on this topic, and indicated that it would support the SCT in providing assistance on respect of awareness raising initiatives.

139. The Delegation of Trinidad and Tobago reaffirmed its continuous support for the work of the SCT relating to the protection of country names and shared the views expressed by previous speakers that the results of the study on the protection of country names showed that such protection was not uniform. Even though the protection of country names could be dealt with in the national laws of Member States, the Delegation considered there had to be a more coherent and consistent international framework. Therefore, the SCT should further discuss the proposal of the Delegation of Jamaica containing a draft joint recommendation, as it could assist the SCT in reaching consensus on a reference guide or an international best practices document for the protection of country names. Consequently, the Delegation welcomed continued discussions on this proposal in the future.

140. The Delegation of Guatemala expressed interest in discussing the proposal made by the Delegation of Jamaica, and considered that this would enrich the existing legislation on the subject and also propose mechanisms which would facilitate the practical implementation of those laws.

141. The Delegation of El Salvador noted that the proposal made by the Delegation of Jamaica had the added value of contributing to the examination of the legal provisions on the protection of country names which, in its view, was regulated very generally in Article 6^{ter} of the Paris Convention, while national laws had more explicitly implemented such protection. The Delegation supported the statement made by the Delegation of Trinidad and Tobago as to continuing work in the SCT on this topic.

142. The Delegation of the United States of America thanked the Delegation of Jamaica for its proposal and extensive work on the topic. In document SCT/31/5, the Delegation of Jamaica identified the perceived shortcomings of existing national procedures for the protection of country names based on document SCT/29/5. For example, the Delegation of Jamaica noted that national examination typically only considered whether the use of the country name was misleading, deceptive or false. Further, only a few countries had *per se* protection for country names. Also, it noted that avenues for third party challenges of marks containing country names were inadequate because governments had difficulty with litigation requirements, foreign attorney representation, legal standing to bring action in another country, and clear legal documentation as to who within a particular government was the competent authority to pursue enforcement action. These criticisms actually identified potential problems with the proposal by the Delegation of Jamaica, namely that turning governments into brand owners necessitates fundamental changes to the intellectual property systems around the world. The Delegation acknowledged that governments worldwide supported intellectual property rights as a tool for development and considered it logical that they would themselves want to capitalize on the same systems that were helping their businesses grow and increase exports of goods and services. However, the criticisms by the Delegation of Jamaica about the existing mechanisms for challenging country names in trademark offices and national courts identified the difficulties that governments faced as private right holders. For example, the role of a “government as brand owner” necessitated government action to acquire, maintain and enforce its brands. The government should act like a brand owner, which meant that it needed to use the existing intellectual property systems as other private right holders did, and needed to hire competent attorney representation both domestically and abroad, as well as to provide funding for those

activities. Ultimately, it would need to use the nation brands on specific goods or services in export markets and also license the brands to its nationals or other licensees with appropriate quality control oversight. The Delegation underlined that this had not historically been the role of governments and that it was not clear whether it would be possible for many of them to take on that role. Therefore, there was a profound disconnect between existing intellectual property systems built for private owners and the desire of some governments to assert ownership rights over public symbols. The SCT was asked to address and reconcile that disconnect and that would be a difficult and significant undertaking, although some delegations might not share the desire to assert ownership rights over their public symbols. Moreover, many countries had businesses which might not support a work plan to recognize such ownership rights, either prospectively or retrospectively. The Delegation asked how the SCT would proceed, since the underlying premise of the proposed approach was that countries own their name. However, the Delegation could not answer that question without fully understanding the implications of ownership for the United States government, the United States international obligations, the impact of existing rights around the world and the potential demand for recognition of reciprocal ownership rights for other governments. Therefore, it considered that to launch text based negotiations was clearly premature, and suggested that the Secretariat prepare a paper exploring the issues raised by governments as brand owners, in particular as brand owners of country names or other public symbols. Specifically, the Delegation sought answers to fundamental questions implicated by this proposal, namely what right the SCT was asked to recognize and protect? Did such a right exist either nationally or internationally? Did or could governments own their names and for those that did, how did they regulate their use domestically and internationally? Did they own them only in a commercial or also in a non-commercial context? If the context was commercial, did governments own their names for specific goods or services and how about governmental services? The Delegation wondered, when regulation of country names and in particular foreign country names, went beyond addressing commercial harms, mainly deception, what was the regulatory justification for restricting freedom of speech in trademarks, and also wondered whether international regulation of country names would potentially conflict with internationally agreed country of origin labeling rules. If the names of countries and associated identifiers were to be recognized and protected in all other countries, foreign governments would essentially be reserving these terms for registration and use only by those authorized by the competent authority of the country of origin. Then how would countries evaluate who is the competent authority to speak for a particular government brand owner and finally did all governments have a designated competent authority that would investigate, authorize and control the licensed use of the country names? The Delegation believed that the SCT did not have the information it needed to begin considering the significant and far reaching obligations that the proposal by the Delegation of Jamaica had raised, and therefore asked for further information on this topic.

143. The Delegation of Turkey said that it was ready to discuss the issue of country names, which had a particular importance for developing countries. The Delegation said that it would provide comments on the proposal presented by the Delegation of Jamaica at a later stage, once the national experts would examine it in detail, and noted that this issue should remain in the agenda of the SCT.

144. The Delegation of Norway recognized the interest that this topic had raised in the SCT and supported the statement made by the Delegation of the United States of America. Before continuing work on country names, it was important that the Committee determine what outcome would be achieved. The Delegation asked whether the SCT wished to create norms to help Member States to protect country names as part of a nation branding strategy, or if it was more important to have an efficient and flexible system for users, intellectual property offices and other authorities alike, while at the same time preventing monopolization and misuse of country names. The Delegation stressed its preference for the latter. Considering the amount of trademark filings containing country names, it was clear that users often wanted to associate themselves with the country of origin or the goods and services, for example in the fashion

industry. The Delegation did not see any reasons to hinder these practices and believed that the use of country names in trademarks was unproblematic as long as holders did not monopolize country names and mislead the general public as to the origin of goods or services. It was evident from the revised draft reference document SCT/30/4 that these two issues were already taken care of among Member States. According to that document, nearly all of the respondents (95.5 per cent) would refuse a trademark consisting of or containing a country name if the mark was considered to be descriptive and 98.5 per cent would refuse a trademark considered to be misleading as to the geographical origin. In other words, offices would prevent misuse of country names by refusing misleading trademarks. The Delegation expressed concern over the fact that while creating norms regarding the protection of country names, users would be put at a great disadvantage. This would be the case if applicants, for example, were required to provide documentation that their goods and services originate from the country in question or were required to provide authorization from the country in question in order to be able to register a trademark. This would make the application procedure a lot more burdensome for applicants and indeed also create an unnecessary workload on intellectual property offices as clearly pointed out by the Delegation of the United States of America. The Delegation did not see the benefit of establishing such a system, and thus, expressed the firm opinion that a joint recommendation was not necessary.

145. The Delegation of Japan indicated that the situation of trademarks containing country names should not be excessively restricted or conditioned as long as a mark which was distinctive was not liable to mislead the public. In the view of the Delegation, country names were geographical terms that could be used to indicate a place of origin or a business establishment when necessary in the course of a trade. The Delegation believed that to move forward the discussion on the protection of country names the issue had to be carefully considered by taking into account the possible impact of such protection on economic activities.

146. The Delegation of Italy said that the issue of the protection of country names was important and supported the idea of adopting a joint recommendation as the outcome of the work of the SCT in this area. It believed that an agreement could be reached on a solid instrument that would be effective in promoting the protection of country names that would be easy to use by Member States and national authorities, and that would establish an appropriate balance between all interests involved by taking into account legitimate business practices. The Delegation was open to work on the basis of the text proposed by the Delegation of Jamaica along the lines described. In particular, further work was required to improve the document to simplify its overall structure, streamline and clarify its provisions.

147. The Delegation of Colombia supported the initiative presented by the Delegation of Jamaica against the background of the current lack of protection of country names against the registration of trademarks that included such names. The Delegation considered that country names should not become commercial trademarks and that the proposal could be supplemented with the idea that country names should not be registered as marks, irrespective of whether the goods or services originate from the country in question. The reason for this exclusion did not lie in the information contained in the mark, since trademarks could be subsequently sold or transferred to another person who was perhaps not a national of the country concerned. The only exception could be collective, certification trademarks or appellations of origin. The Delegation also believed that a nation brand was not a legal concept but rather a Government strategy to support its national businesses and products. This concept could be covered more appropriately through collective, certification trademarks or even appellations of origin. The Delegation hoped that the protection of country names would be further improved to avoid their inclusion in trademarks registries. Disclaimers should not be permitted, as these would allow the use of country names on goods. That is what geographical indications do and thus, registration of country names as trademarks would not appear necessary.

148. The Delegation of the Republic of Korea recognized that most Member States used a variety of methods for protecting country names and expressed concern over the fact that a unitary guideline would appear to restrict the discretion of Member States in this area.

149. The Delegation of the Russian Federation thanked the Delegation of Jamaica for its proposal, which reflected the widespread concern regarding the lack of protection of country names in national systems, especially against their registration as trademarks, but also their use as other business identifiers, commercial names, trade names and domain names. The Delegation had informed the SCT in the past that it did not see any problem with use of country names as trademarks, because national legislation was balanced and local experts had a good understanding of the problems that could arise if trademarks including country names were registered. However, in relation to other identifiers such as commercial and trade names, which were not subject of registration and in relation to which no examination was conducted before using them in the market, conflicts that could arise. Such conflicts were dealt with in national courts, according to unfair competition and anti-monopoly laws. The proposed recommendation could be useful in this context, to harmonize the different legislative systems. Therefore, the Delegation supported preparatory work towards a recommendation with regard to the protection of country names in a broadest sense, not only in connection with trademarks. Nevertheless, it highlighted that the preparation of documents for the diplomatic conference on Industrial Designs was more important, since the SCT had received a mandate from the General Assembly. Consequently, work on the proposed recommendation on country names could be postponed to a later stage after the conclusion of the work on industrial designs.

150. The Delegation of Senegal considered that the proposal of the Delegation of Jamaica was very interesting and supported the draft joint recommendation, which was based on an extended research and deserved that the SCT devote some effort to improve the text. The Delegation expressed the view that this draft recommendation should also include the protection of names of specific locations in a country.

151. The Delegation of Hungary said that it had followed the discussions at previous meetings with great interest and had identified various aspects of the protection of country names in trademark registration procedures and the use of such names as trademarks. The Delegation shared some of the concerns expressed in documents SCT/31/4 and SCT/31/5, in particular those resulting from divergent practices in trademark registration and post-registration procedures. The Delegation was concerned about the different ways in which intellectual property offices applied virtually identical or closely similar legal provisions relating to misleading character or deceptiveness as regards the geographical origin of certain products. The Delegation saw the possible benefits of a convergence exercise in this area with a view to harmonizing the practices of intellectual property offices. The Delegation was ready to continue working on this matter with a very constructive spirit and wished to learn about the positions of other delegations.

152. The Delegation of South Africa recalled that it had supported a non-binding, non-prescriptive reference document in relation to the protection of names of States, while acknowledging that such a document could serve as a useful working tool for national offices. However, the Delegation had also expressly stated that the extent to and the manner in which such a document would be used within intellectual property offices, whether as a simple reference document, as an internal office practice or as published office guidelines, should remain within the sole discretion of the offices, it being understood that the document was of a non-binding and non-prescriptive nature. It was in that context that the Delegation, had in principle, supported the proposed work program on the protection of names of States that had been tabled by the Delegations of Barbados and Jamaica. Having had the opportunity to review in detail the proposal by the Delegation of Jamaica as set out in document SCT/31/4, the Delegation had a number of serious concerns with respect to the draft proposed text and was no longer able to support it. In particular, it was concerned about the reference to

harmonization of examination practices and determination of trademark registrability, as well as the mandatory nature of the language used throughout the draft text. In addition, the Delegation was worried about the accompanying obligations that certain mandatory clauses would place on WIPO Member States. It emphasized that the language used was classical treaty language and not a language associated with a non-binding and non-prescriptive reference document. The draft text was thus not in accordance with what was originally envisaged and the Delegation could not support the proposed draft joint recommendation, nor would be able to do so in the future.

153. The Chair said that a number of delegations had expressed support for the proposal presented by the Delegation of Jamaica in document SCT/31/4, although some of them were of the view that the proposal needed to be further developed.

154. The Delegations of Norway and the United States of America considered that it was premature to start text-based negotiations on this matter and preferred that further analysis be devoted to related issues, such as the consequences of any additional protection on currently applied trademark rules and procedures.

155. The Delegation of Jamaica indicated that it was prepared to further develop its proposal and to submit it to the next session of the SCT.

156. The Chair concluded that the SCT would consider a revised version of the proposal by the Delegation of Jamaica at its thirty-second session. In preparation for that session, the Delegation of Jamaica, with the assistance of the Secretariat, would amend its proposal taking into account the comments made at the present session as well as with additional comments to be provided by delegations in writing, prior to the thirty-second session of the SCT.

Update on Trademark-Related Aspects of the Domain Name System

157. Discussions were based on document SCT/31/6.

158. Upon invitation by the Chair, the Secretariat provided an update on trademark-related aspects of the Domain Name System (DNS), which is currently in the process of expansion.

159. The Delegation of India expressed its appreciation to the Secretariat for document SCT/31/6. The Delegation sought some clarification as to how the WIPO Arbitration and Mediation Center (the WIPO Center) performs its work in relation to the Internet Corporation for Assigned Names and Numbers (ICANN).

160. The Secretariat noted the two aspects of the WIPO Center's domain name work: the case administration aspect, and the policy aspect. The policy aspect, on which Member States are briefed, includes participation in ICANN meetings with a view to having the concerns of trademark owners taken into account. In the administration of cases, the WIPO Center acts in a neutral, independent capacity, including the appointment of third-party panelists, with ICANN's involvement essentially limited to ensuring implementation of the outcome of WIPO panel decisions by ICANN-accredited registrars.

161. The Delegation of Japan expressed its appreciation to the Secretariat for providing the update. The Delegation noted that in light of the new generic top-level domains, the interests of trademark owners should continue to be recognized, and the implementation of the Trademark Clearinghouse should not impose a burden on trademark owners.

162. The Delegation of Hungary thanked the Secretariat for its presentation, and requested that the Secretariat continue to monitor this subject.

163. The Delegation of Switzerland thanked the Secretariat for its update on trademark-related aspects of the DNS, and expressed its support for the statements of the Delegations of Hungary and Japan and regarding the rights of trademark owners. The Delegation requested that the Secretariat continue to give regular updates in this regard.

164. The Delegation of Italy thanked the Secretariat for its work, and stated that it was in alignment with the Delegations of Hungary, Japan and Switzerland in requesting regular updates.

165. The SCT took note of document SCT/31/6 and the Secretariat was requested to keep Member States informed on future developments in the DNS.

AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS

166. Discussion was based on documents SCT/31/7 and SCT/31/8 Rev.

167. The Delegation of the United States of America recalled that at the previous session of the SCT it had proposed to launch the work on geographical indications and that the proposal had received many favorable responses. The Delegation therefore requested the Secretariat to prepare a survey of existing national geographical indications regimes for the thirty-second session of the SCT. The Delegation believed that such a survey would shed light on the complicated international landscape for geographical indications owners, trademark owners and users of generic terms and would provide appropriate guidance to the SCT and WIPO in general as to the most appropriate path forward. The Delegation said that the Lisbon Union was currently presiding over the only geographical indications forum in WIPO and the SCT was not at the table. The Delegation expressed the opinion that the geographical indication regime designed by the Lisbon Union was discriminatory and exclusionary and yet relied on the rest of WIPO to fund its diplomatic conference. The Delegation was of the view that observer delegations at the Lisbon Working Group had not had power to affect any change to the basic proposal of the treaty. The Lisbon Working Group appeared fully committed to the original model that had been designed by a few countries in 1958, based on their administrative appellations of origin systems. The Delegation believed that the Working Group was not deviating from that model and was limiting any new proposal in light of the approaching 2015 diplomatic conference. Expressing its concern regarding the subsidization of the Lisbon system operations by WIPO funds, the Delegation considered that such subsidization would appear to be consistent with the domestic regimes of Lisbon Union members who relied on public money to pay for the creation and the enforcement of private property rights. The Delegation stressed that this funding scheme was not a choice that United States taxpayers had made and expressed its concern with regard to the attempt to demand public funding from other countries' taxpayers to protect foreign geographical indications. The Delegation further expressed its disagreement with the geographical indication model that the Lisbon Union was advancing. The Delegation believed that reserving lists of foreign geographical indications, not requiring use to maintain the rights and cancelling or phasing out prior trademarks or generic uses would have a significant impact on local industries, local consumers and local taxpayers. The Delegation suggested that the Secretariat launch a survey of the existing national geographical indication regimes, as the first step of any useful discussion should be the understanding of the international landscape. The Delegation stressed the need to have an accurate view of the various geographical indication models in order to complement the work already done within the SCT.

168. The Delegation of Argentina, aligning itself with the statement made by the Delegation of the United States of America, shared the concerns with regard to the process followed by the Lisbon Union for the review of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. The Delegation expressed the view that this revision, originally limited to procedural matters, had taken another direction, i.e. towards extending the scope of the treaty to geographical indications, in addition to appellations of origin. The Delegation believed that the Working Group on the Development of the Lisbon system had exceeded the mandate established in September 2008 and this would result in a new intellectual property agreement. Moreover, as part of this review process driven by the Lisbon Union, in October 2013 the Assembly of the Lisbon Union had approved the convening of a diplomatic conference for the adoption of a revised Lisbon Agreement on Appellations of Origin and Geographical Indications in 2015. The Delegation further expressed the concern that this diplomatic conference would be funded from the WIPO budget, despite the objection of some WIPO Members that were not members of the Lisbon Agreement. This practice was compounded by the fact that all WIPO members would fund, through the budget of the Organization, a diplomatic conference agreed only by members of the Lisbon Union. The Delegation further expressed its disagreement with that practice, with the terms of the Agreement in force and with the intended scope of its revision. The Delegation also believed that the procedural rules for approving the convening of a diplomatic conference in the framework of WIPO had not been followed. The Delegation drew the attention to the consequences of expanding the scope of the Lisbon Agreement, believing that it would consolidate a system of international registration of geographical indications and thus harm the interests of the Member States in other contexts. The Delegation observed that WIPO should serve the interests of all its Member States and not of a few and that any discussion of a system of international registration of geographical indications should be conducted in a body representing all WIPO Member States. The Delegation believed that as a body with specific responsibility on geographical indications, the Standing Committee should continue discussions on geographical indications, including the issue of a filing system for the protection of geographical indications. The Delegation further believed that the work on the development of the Lisbon system should be dealt with in the SCT. In conclusion, the Delegation said that a study of the existing national approaches to protect geographical indications would help to better understand the possible courses of action to ease international protection without affecting the existing legal systems and practices in countries that acceded to the TRIPS Agreement.

169. The Delegation of the European Union, on behalf of its member states, thanked the Delegation of the United States of America for the proposal outlined in document SCT/31/7. The Delegation recalled that the Lisbon Working Group dealt with the revision of the Lisbon System for the International Registration of Appellations of Origin as a means for obtaining geographical indication protection internationally through a single registration. The key aim of that revision was to make the Lisbon system more attractive to countries that currently were not party. Thus, the system might expand and reach a wider membership. In an effort to build an inclusive system, observer status of the Lisbon working system was open to all WIPO members. The Delegation noted that the Lisbon Working Group had enjoyed much useful input from those observers. The Delegation believed that the best way to accommodate the diversity of national systems was the expansion of the relevant registration systems run by WIPO, namely the Lisbon and Madrid systems. The Delegation said that moving ahead with the revision of the Lisbon system should be WIPO's first priority on geographical indications and that activity would lead to improvements in relation to the diversity and the flexibility allowed to Member States by the TRIPS Agreement. Consequently, the Delegation did not feel that the study proposed by the Delegation of the United States of America would add value and was not in a position to endorse it.

170. The Delegation of Portugal thanked the Delegation of the United States of America for the proposal contained in document SCT/31/7. The Delegation said that this proposal pointed to the renewed interest of WIPO membership towards geographical indications protection which was of utmost importance to the business community. However, without questioning the competence of the SCT to debate geographical indications, the Delegation remained doubtful of the added value that an additional survey on existing national regimes or yet another discussion on national examination practices would entail. The SCT had undertaken quite a considerable array of studies, namely documents SCT/8/4, SCT/9/4 and SCT/10/4, on the definition of geographical indications and on the different systems available for their protection. Given the amount of data already available and new developments that could eventually justify the re-assessment of the situation, the Delegation did not see at this juncture the need for additional work. The Delegation remained nevertheless open to focus on other aspects related to geographical indications, such as protection of geographical indications and country names in the DNS, an issue that in the past few years had gained a renewed interest due to the considerable expansion of the Top-Level Domain Names and the correlative need to prevent abusive registration of IPRs as domain names and possible conflicts between them. The Delegation stressed the fact that the proposal for a discussion on a system for the international registration of geographical indications at WIPO or a possible Lisbon alternative constituted a direct challenge to the Lisbon review process which was underway and to which the Government of Portugal had attached a great deal of importance, as could be inferred from the recent offer to host next year's diplomatic conference. The Delegation disagreed with the view that the review of the Lisbon system lacked desired levels of legitimacy and inclusiveness and was procedurally flawed. The Delegation also stressed the fact that the SCT was not the competent body to discuss budgetary or procedural issues pertaining to the Lisbon Union. The Delegation said that although the revision process had been carried out by a small number of WIPO Member States, the main concern and the guiding purpose of the whole exercise had not been limited to their own specific interests. In fact, it was much wider, as it tended to identify improvements which would make the system more attractive for States and users, while preserving the principles and the objectives of the Lisbon Agreement. The Delegation encouraged all interested parties to participate in the process in order to have a more meaningful and inclusive revision of the Lisbon system.

171. The Delegation of the Czech Republic, on behalf of the CEBS Group, thanked the Delegation of the United States of America for the preparation of the proposal outlined in document SCT/31/7 setting out a work plan for exploring the feasibility of a geographical indications filing system. The CEBS Group said that it paid great importance to the current work of the Working Group on the Development of the Lisbon system for International Registration of Appellations of Origin, as mandated by the Lisbon Union, including the decision of the Lisbon Union Assembly on convening a diplomatic conference on the revision of the Lisbon Agreement. The Delegation believed that further improvement of the Lisbon system and attractiveness for other countries was necessary. The work in this regard was open to, and greatly benefited from, the participation of observers and potential members. Expressing the opinion that a study on geographical indications in the context of the SCT would be a duplication of work, the Delegation shared the view that the SCT was not a place to discuss budgetary or procedural issues concerning the Lisbon Union. The CEBS Group did not feel that a study as proposed in document SCT/31/7 would bring added value, and therefore did not endorse the proposal.

172. The Delegation of France, thanking the Delegation of the United States of America for its proposal, believed that WIPO's priority in the field of geographical indications should be the improvement of the registration system provided for by the Lisbon Agreement. Neither the revision of the geographical indications regime under the Lisbon system nor the TRIPS Agreement aimed at imposing a single regime of geographical indications protection. The Delegation pointed out that it did not oppose to any work on geographical indications in general, but it believed that a further study on different methods of geographical indications protection

would not add any new element to the fact that some States used trademark systems and other States used *sui generis* systems for the protection of geographical indications, and that anyone could choose the most appropriate way for a better protection.

173. The Delegation of Italy aligned itself with the statements made by the Delegations of the European Union, the Czech Republic, France and Portugal. The Delegation remained of the view that the work on this proposal would not add value to the work carried out in the past within the SCT or to the work currently carried out within the WTO. The Delegation said that it appeared evident that the main purpose of that proposal was to block or delay the work of the Working Group on the Revision of the Lisbon Agreement. Furthermore, to the Delegation's greater concern, the goal seemed far more reaching as it also appeared to question the very same existence of the WIPO Lisbon system, a system established more than 40 years ago and which had served producers, including rural, small and middle-sized ones, from 28 states. The Delegation believed that, procedurally, the SCT was not the appropriate forum for discussing and taking any decision on the work of another expert working group and, more in general, on the fate, features, operations and finances of a WIPO global intellectual property system, such as the Lisbon system. The Delegation recalled that the Revision of the Lisbon Agreement was not aimed at imposing a single way of protecting geographical indications at the national level, nor a single mechanism to implement the TRIPS obligations. The Delegation reiterated that any country remained free to join the Lisbon system and that, pursuant to the mandate approved by the Lisbon Union Assembly, the work on the revision of the Lisbon Agreement only aimed at improving and updating the legal framework regulating the functioning of the system. The Delegation pointed out that, as such, this did not harm the work of the SCT on the law of geographical indications. As to the substance of the work proposed by the Delegation of the United States of America, the Delegation pointed out that it did not oppose to discussing geographical indications in the SCT, but it believed that another study on national geographical indication legislations would lead to the conclusions that were already known, namely that there were countries which protected geographical indications through the trademark system and others which have developed so-called *sui generis* systems. The Delegation believed that, in light of the diversity of national systems, filing systems administered by WIPO, as the Lisbon and Madrid systems, were the best way to accommodate such diversity and to simply leave to Member States the democratic right to choose which system of protection they wanted to have. Observing that the different filing systems had to preserve such diversity and prevent the situation where one type of legislation prevailed over the other, the Delegation said that blocking the revision of the Lisbon Agreement would instead undermine this diversity and limit the flexibility allowed to Member States by the TRIPS Agreement. Recalling that a lot of work had already been done in this area with, *inter alia*, seven SCT working documents featuring geographical indications, the Delegation reiterated the view that there were no new elements that required restarting this work, which also would be merely duplicative with the one carried in WTO. In this respect, the Delegation stressed that the same Delegation that requested a discussion on a possible universal filing system at the SCT, had pleaded at WTO for a mere non-binding database limited to only wines and spirits, as was indicated in WTO document TN/IP/W/10/Rev.4. The Delegation believed that clarification on this point was needed. Finally, the Delegation suggested discussing the protection of geographical indications in the DNS, pointing out that it had cosponsored a proposal on this matter together with other Member States.

174. The Delegation of Georgia, expressing its support for the ongoing process of revision of the Lisbon Agreement, said that the inclusion of geographical indications in the Lisbon Agreement would have positive implications by making the system more effective for users and attracting new members. The Delegation believed that geographical indications and appellations of origin were related, to the extent that in recent years the Lisbon Member States had been using the Lisbon system to protect their geographical indications along with their appellations of origin. As a Contracting Party to the Lisbon Agreement and bearing in mind the significant progress achieved by the Lisbon Working Group so far, the Delegation believed that

it was neither reasonable nor cost-effective to start new discussion in the SCT on the revision of the Lisbon Agreement and on the interrelation of appellations of origin and geographical indications. Expressing the hope that the convening of the diplomatic conference for the revision of the Lisbon Agreement would not be delayed, the Delegation said that it counted on the Member States' spirit of cooperation to achieve consensus.

175. The Delegation of Norway, thanking the Delegation of the United States of America for its proposal, expressed the view that the SCT was the right forum for discussing geographical indications at WIPO. Taking into account the different existing systems of protection for geographical indications around the world, the Delegation expressed its support for preparing a study, which would provide an overview of the different systems of GI protection around the world and be helpful for national authorities and users as a reference document.

176. The Delegation of Canada, indicating that there could be added value in a study on the various systems of GI protection as proposed by the Delegation of the United States of America, expressed its support for such a study. The Delegation noted that during the last years various bilateral and multilateral treaties had been signed, legislations had changed and, therefore, it was timely to update the work that had been carried out at WIPO some years ago. The Delegation also pointed out that the question of the genericness test had never been fully scoped out and that it would be interested in a study on that issue.

177. The Delegation of Chile, thanking the Delegation of the United States of America for its proposal, concurred with the idea that the revision process of the Lisbon Agreement had transformed an agreement with limited subject matter into a new international agreement that would also include geographical indications. The Delegation, expressing the view that the Lisbon Working Group was not the appropriate body to deal with that subject as it went beyond its mandate, declared that it did not consider that WIPO should finance the diplomatic conference announced for 2015, but the Lisbon Union. While the Delegation supported the proposal made by the Delegation of the United States of America for the preparation of a study which would explore the international systems of protection for geographical indications, it did not support the views expressed by the Delegation of the United States of America with regard to the value of GI systems. The Delegation of Chile believed that the GI system was a valuable instrument for the cultural and economic development of countries.

178. The Delegation of Iran (Islamic Republic of), thanking the Delegation of the United States of America for tabling the proposal, recalled that some countries used trademark systems to protect geographical indications, while many countries had developed *sui generis* systems. In light of the diversity of national systems, filing systems administered by WIPO, like the Lisbon and Madrid systems, were the best options to accommodate such diversity and to empower Member States to choose the system of protection they needed. Expressing the view that the proposal did not bring any added value to the work done by the Standing Committee in the past in the field of geographical indications, the Delegation believed that the idea behind this proposal was to block the work of the Working Group on the revision of the Lisbon Agreement. The Delegation pointed out that the mandate of the SCT to discuss geographical indications should not be interpreted as meaning that the Committee would have the authority to prevent the Contracting Parties to the Lisbon Agreement to revise the Lisbon system. The Delegation also believed that both SCT and the Lisbon Union could discuss geographical indications within their respective mandates. To conclude, the Delegation declared that did not support launching work on geographical indications within the SCT at that stage.

179. The Delegation of Peru, while thanking the Delegation of the United States of America for the proposal contained in document SCT/31/7, declared that did not support its discussion. The Delegation recalled that, as requested by the Lisbon Union Assembly at its twenty-third session, the Working Group on the Development of the Lisbon system had met for the first time in March 2009, i.e., almost 5 years ago. Its aim was to examine how to improve procedures in

accordance with the Lisbon Agreement and to develop a better system for appellations of origin, also seeking for a more inclusive system. The Delegation noted that the Lisbon Working Group had a clear work program and a working text and if some Delegations had concerns, they should be raised within that Working Group and not in the SCT. The Delegation questioned the scope of the proposal made by the Delegation of the United States of America and the added value of a new study, in light of the multitude of studies that had already been made on the subject in the framework of the SCT. On the other hand, if the concern was related to budgetary arrangements, the Delegation believed that the appropriate forum for that was the Committee on Program and Budget. Finally, the Delegation said that it did not remember that any Member State had opposed, in the General Assembly session that took place in October 2013, to the decision to convene a diplomatic conference in 2015.

180. The Delegation of Switzerland, taking note of the proposal made by the Delegation of the United States of America, said that it did not support its discussion in the SCT because of the subject matter and possible implications on other WIPO structures and bodies. The Delegation believed that the proposed study did not bring any added value to the work already done by the SCT and that there were no new developments in the field that would require resuming the work on geographical indications. Concerning document SCT/31/7, the Delegation wished to flag several points. The Delegation did not share the view that the Lisbon system or the revision process would give special protection to geographical indications, pointing out that this had been explained on several occasions. With regard to the limitation of flexibilities, the Delegation recalled that the TRIPS Agreement established a minimum for the protection of geographical indications but did not prevent countries wishing to have higher protection for geographical indications to do so. The Delegation, along with many others, had been complaining about the insufficient level of protection provided for by the TRIPS Agreement for products other than wines and spirits. The Delegation regretted the fact that some delegations were trying to prevent countries wishing to have a higher level of protection from the possibility of doing so in WIPO. In addition to the substantive arguments, the Delegation expressed its concern about attempts to jeopardize agreements or decisions already taken. At this point, the Delegation did not favor launching work on geographical indications within the SCT. Nevertheless, the Delegation said that the issue of the protection of geographical indications with regard to domain names remained open and required additional research.

181. The Delegation of Australia, supporting the discussion on geographical indications within the SCT, which was the appropriate forum for these matters, said that it was pleased to see a reinvigoration of the Committee's work on this topic, particularly as the SCT had proven to be an effective forum for other issues within its responsibility. The Delegation, thanking the Delegation of the United States for its proposal, considered that the proposal contained some important points and welcomed the opportunity to explore some of these ideas further. As highlighted at the previous session, Australia had two systems under which geographical indications could be registered. One was the certification trademark system under which geographical indications for all goods and services could be protected. The other was specialized geographical indications legislation for the protection of wine geographical indications. The Delegation was pleased to share its experience in the operation and interface between both of these registration systems. The Delegation believed it was possible to develop an international filing system that would be inclusive of both registration systems. In this context, the Delegation encouraged exploring the areas of convergence in discussions of national protection mechanisms rather than focusing only on the differences. The Delegation was also interested in exploring the concept of using the Madrid Protocol or the Geneva Act of the Hague Agreement as an appropriate model for an inclusive filing system for geographical indications. These systems did not demand substantive harmonization of laws or legal regimes but merely created a mechanism for intellectual property owners to apply and maintain national rights. The Delegation said that an inclusive model for an international filing system would enable greater membership, increasing the value of the treaty to all. At a practical and national level, the Delegation was unsure of how the national offices of parties to any revised Lisbon Agreement

would recoup the costs of examining and protecting geographical indications notified under the agreement. If there were no clear mechanism for cost recovery for national offices, it would seem that protection of foreign geographical indications would need to be subsidized by national fees or provided at a cost to the national office. Existing international filing systems could be used as a model for ensuring that any revised Lisbon agreement was self-sustaining in WIPO and not a financial burden on national offices. The Delegation further wondered about the intended effect of Article 29.4 of the draft revised Lisbon Agreement. In its view, these requirements looked more likely to discourage than encourage new membership, if those acceding to the revised Lisbon Agreement were required to protect the appellations already protected under it. The Delegation noted that acceding parties would have to examine or assess all existing appellations of origin or geographical indications and it appeared that there were no provisions for a service fee for this work.

182. The Delegation of Hungary, while thanking the Delegation of the United States of America for its proposal, expressed its support for the arguments put forward by the Delegation of the European Union, on behalf of its member states, the Delegation of the Czech Republic, on behalf of the CEBS Group, and the delegations of France, Georgia, Iran (Islamic Republic of), Italy, Peru, Portugal and Switzerland. The Delegation wished to underline the fact that the SCT could not intervene or overrule the work and the results of a working group established under an independent WIPO administered treaty. If so, the SCT could easily control the activity of working groups created for further development of the Madrid system, the Hague Agreement or the Nice Agreement, provided that some members or non-members of the cited unions were not in agreement with the presumed outcome. The Delegation recalled that the Lisbon system was already neutral at that date on how countries provided protection for appellations of origin since there were no provisions that would entail the obligation to introduce *sui generis* type of geographical indication protection into the national legislations. The Delegation noted that this issue was often subject to misinterpretation. Concerning the financial matters, the Delegation agreed that the SCT was not the place to discuss budgetary issues and, at the same time, the Delegation drew attention to the fact that it would be easy to find examples of systems established by WIPO treaties that were operating in a non-self-financing manner. The Delegation pointed out that profitability could be the only benchmark to decide on the viability of an area of intellectual property law and wondered if somebody would question the usefulness of the register under Article 6^{ter} of the Paris Convention. For all of these reasons, the Delegation did not support future work on the basis of the proposal put forward by the Delegation of the United States of America and acknowledged that a proposal for future work on the protection of geographical indications and country names in the DNS cosponsored with other delegations would be presented later during the session.

183. The Delegation of Japan, thanking the Delegation of the United States of America for its proposal, believed that the SCT was the appropriate forum in WIPO to discuss geographical indications. The Delegation supported requesting the WIPO Secretariat to launch a study to examine the various national legal approaches to geographical indications. The Delegation hoped that such a study would deepen the understanding on various geographical indications issues. Additionally, the Delegation shared the concerns raised by the Delegation of the United States of America regarding the procedural and budgetary issues of the Lisbon Union's work and welcomed the discussion of those topics in other appropriate *fora*.

184. The Delegation of Israel, indicating that it was a Member of the Lisbon Agreement and an active participant of the ongoing WTO negotiations on geographical indications, expressed its support for the proposal made by the Delegation of the United States of America.

185. The Delegation of the Republic of Korea, supporting the proposal made by the Delegation of the United States of America, believed that the SCT was the right forum to discuss geographical indications. The Delegation also believed that a study for exploring the feasibility of a geographical indications filing system would be of great benefit for all Members States.

186. The Delegation of Uruguay, in its national capacity, aligned itself with the statements made by the Delegations of Argentina, Australia, Canada, Japan and the United States of America. The Delegation concurred with the view that the SCT was the appropriate forum in WIPO to discuss geographical indications. The Delegation also believed that the study would add value to the work carried out in the past within the SCT since many new events had occurred and, therefore, an updating survey would reflect all changes and ultimately enhance the discussions in the SCT.

187. The Delegation of South Africa noted that document SCT/31/7 stated that there had been a debate for decades over appropriate systems for geographical indications protection. The document further stated that the SCT was the WIPO Committee with jurisdiction and a standing agenda item for work on geographical indications. The reference was also made to different and conflicting approaches to the protection of geographical indications that existed and were being negotiated around the world. The Delegation further noted that the same document contained a proposal to ask the Secretariat to prepare a survey of current existing national GI regimes which would shed light on the complicated international landscape of GI and which would provide appropriate guidance to the SCT and to WIPO in general on the most appropriate path forward to improve the situation. The Delegation suggested that the Secretariat solicit input on specific topics related to the various geographical indication regimes in order to collect national office practices and perspectives for compilation in a SCT working document for its next meeting. The Delegation stressed the fact that the issue of geographical indications was important for its country as it had begun to formalize the protection of geographical indications within a new *sui generis* legislative framework. In conclusion, the Delegation remained committed to the discussion on this matter in order to influence the emerging landscape for GI protection and to ensure that such regimes were in line with other commitments, including those under the TRIPS Agreement and bilateral agreements.

188. The Delegation of Paraguay, aligning itself with the statements made by the Delegations of Argentina, Australia, Japan, Uruguay and the United States of America, supported that the SCT continue the work on geographical indication issues. The Delegation expressed the view that this would not duplicate the work already done but, to the contrary, would supplement the discussions held within the framework of the SCT. The Delegation, indicating that the matter of geographical indications was of particular importance for Paraguay, believed that an updated survey on the various geographical indications systems would be very useful. With regard to the Lisbon system, the Delegation suggested to take note of the progress made within the Working Group in order to avoid duplicating the work. The Delegation, indicating that Paraguay was not a Member of the Lisbon Agreement, supported the discussion on geographical indications within the SCT, provided that it would be sufficiently inclusive and take adequate account of the views of all members.

189. The Delegation of the Russian Federation, while thanking the Delegation of the United States of America for its proposal, disagreed with the arguments put forward in document SCT/31/7, especially with those referring to the mandate of the Lisbon Working Group and also with comments on the financing of these activities. The Delegation recalled that the key reason for the establishment of the Lisbon Working Group was that the Lisbon Agreement had not been considered sufficiently effective. Although the Lisbon system was established more than 40 years ago and many states had acceded to it, a revision of the treaty was necessary in order to guarantee a greater effectiveness and a greater coverage. The Delegation recalled that observer status at the Lisbon Working Group was open to all WIPO members and representatives of users. The Delegation further noted that a large number of delegations had participated in the works and the Lisbon Working Group had enjoyed much useful input from all. The Delegation, reiterating its interest in continuing work on geographical indications within the SCT, pointed out that priorities should be established. The Delegation

agreed that the issue of the protection of geographical indications with regard to domain names in the context of the expansion of the electronic commerce remained open and required additional research.

190. The Delegation of Switzerland recalled that, in its opinion, the proposal by the Delegation of the United States of America was not an appropriate basis to start work on geographical indications within the Committee.

191. The Delegation of Hungary, aligning itself with the intervention made by the Delegation of Switzerland, pointed out the difficulty of dissociating, in the proposal made by the Delegation of the United States of America, the elements for the study and its objective. It was difficult to agree with a study that would lead to an objective to which the Delegation could not subscribe.

192. The Representative of AIPLA, expressing its support for the proposal put forward by the Delegation of the United States of America, pointed out that many surveys and studies that had been done within WIPO or WTO framework were outdated. The Representative, referring to the recent bilateral treaty between Canada and the European Union, said that much had changed in the world of geographical indications. The Representative noted that there were disagreements among delegations members of the Lisbon Working Group and those that were not members. Pointing out that geographical indications were not a black and white issue and that a compromise could be reached, the Representative urged the Delegations to engage constructively and to show a spirit of compromise on the geographical indication discussion within the SCT, which had proved to be an efficient forum for many other discussions. Furthermore, explained that practitioners were advising clients who, wherever they lived, were confused about geographical indications. In this respect, materials prepared and presented by the Committee and WIPO were appreciated by these clients. The Representative greatly encouraged and supported any survey shedding light on this very complicated area which, in its view, became more and more fractured by bilateral treaties. Moreover, the Representative noted that the Delegation of the United States of America had not said that the survey would somehow block the work of Lisbon Working Group.

193. The Representative of ORIGIN wished to express its view from the perspective of GI users who faced every day the challenges of managing geographical indications in the time of globalization and from the perspective of ORIGIN, an organization representing geographical indication groups, both from jurisdictions that have *sui generis* systems and trademark systems to protect geographical indications. The Representative believed that producers had shown to be pragmatic and advanced in terms of understanding the needs for geographical indications protection in different jurisdictions. Many of them, for example, had registered their geographical indications under *sui generis* system and collective marks within the European Union and as certification marks in the United States of America. The Representative also believed that countries were able to reach compromise solutions and cited as example the bilateral agreement between Canada and the European Union. The Representative further expressed the view that the Internet and the new domain names were emerging challenges. The Representative believed that major problems were the exclusion of geographical indications from the Uniform Domain Name Dispute Resolution Policy (UDRP), the legal uncertainty in respect of clearing houses and the challenges in terms of costs with regards to the mechanisms of settling disputes. Apart from that, domains such as “.coffee”, “.food”, “.organic” could lead to the occurrence of new web sites not necessarily belonging to the concerned association of producers. The Representative believed that time had come to discuss these issues within the framework of the SCT.

194. The Representative of INTA welcomed the proposal made by the Delegation of the United States of America to explore the feasibility of a geographical indications filing system that would be inclusive for all national law protection mechanisms. The Representative recalled that for several years, including in the Working Group on the Development of the Lisbon system,

INTA had been advocating an international filing and registration system that would, as the Madrid system, leave questions of substance to national law and that could effectively attract participation by countries with different GI protection systems. The Representative further shared the concerns expressed by the Delegation of the United States of America regarding the process of revision of the Lisbon Agreement and regretted that such process had not proven to be conducive to the type of inclusive mechanism for the acquisition and maintenance of rights that INTA had been looking for.

195. The Delegation of the United States of America, thanking the Delegations of Argentina, Australia, Canada, Chile, Israel, Japan, Norway, Paraguay, Republic of Korea, South Africa and Uruguay for their support, underlined the geographic breadth and diversity in favor of gathering further information on this topic. The Delegation observed that some delegations shared its feelings as to the revision process of the Lisbon system. In its view, any country could join the Lisbon system provided that it applied a complying system. Consequently, joining the Lisbon system would require a complete switch to only one type of system since systems other than the one originally contemplated by the Lisbon system did not work. Moreover, the Delegation, indicating that the aim of its proposal was to ask the Secretariat to gather information, stated that it seemed highly irregular for the Committee to oppose to information gathering on a topic within the mandate of the SCT, supported by a sizeable number of delegations, and expressed its concern with such opposition. The Delegation added that, as pointed out by some delegations and by the Representative of AIPLA, previous studies or information were outdated. Finally, the Delegation of the United States of America expected that delegations having talked about the Lisbon system would support, as members of the Madrid system, proposals to change the Madrid system so as to accept geographical indications, if that were to become a topic.

196. The Delegation of Hungary presented a proposal, jointly sponsored by the Delegations of the Czech Republic, Germany, Hungary, Italy, Republic of Moldova and Switzerland, as contained in document SCT/31/8 Rev. The proposal dealt with the protection of country names and geographical indications in the Domain Name Systems (DNS). The Delegation of Hungary recalled that the availability of the mediation and arbitration procedures in the DNS for geographical indications had previously been addressed by the SCT in late 1990. Consequently, WIPO had conducted two studies in the course of the first and second WIPO Internet Domain Name Processes. Interviews of stakeholders undertaken at that time had shown that country names, important geographical names and geographical indications were targets of cybersquatting. Despite of this signal, the Delegation of Hungary regretted that the admissibility of complains under the UDRP still remained limited to trademarks only. In its opinion, it was difficult, if not impossible, to justify that interests of trademarks owners against conflicting domain names were preserved in an efficient and frequently used system, such as the UDRP, while the same possibility was not provided for individual States or holders of geographical indications. The Delegation of Hungary recalled that, as a consequence of this missing balance, the WIPO General Assembly had already tried, in 2002, to remedy the situation by recommending to the Internet Corporation for ICANN the extension of the UDRP to country names and further reflection on geographical indications. However, the Delegation of Hungary observed the unchanged scope of domain names mediation and arbitration and the lack of progress on this issue. Based on a negative experience and unresolved issues from the past, delegations and observers had continuously stressed, since the twenty-fourth session of the SCT, their concerns about the new top-level domain names introduced by ICANN in 2013. The Delegation of Hungary had highlighted that any new development of the existing framework would open the door to new unlawful uses of intellectual property rights, without providing efficient legal remedies for right holders. At the same time, the Delegation noted that discussions within the SCT had influenced the norm-setting process of ICANN with positive effect on enhanced legal rights protection mechanism in the area of trademarks. In this regard, the extension of the UDRP to new generic top-level domain names for trademark disputes or the protection of intergovernmental organizations names were good examples. However, the

Delegation of Hungary regretted that significantly improved provisions of the ICANN application guide book failed to resolve important issues, such as the protection of country names and geographical indications. As to the list of important geographical names, the Delegation of Hungary said that it was neither convinced by the faithful application of this list nor the ambition as to whether the list aimed at including all important geographical names. In its view, it would be beneficial for all stakeholders to analyze the selection methods of important geographical names and the possible improvement of the list. Even though names of countries, names of capitals and names of geographical places were incorporated into the list, ambiguity appeared as to whether the list contained all variations of those names, including translations, historical names and commonly used abbreviations, and whether the distinction had been made between important and not important names. The Delegation of Hungary recalled that several delegations had previously considered that the list of important geographical names should be extended to protected geographical indications, the use of which, as top-level domain names, conveyed information to consumers about the geographical origin of the product. The Delegation reported that geographical indications were often subject of unlawful misuses, which were extremely harmful for consumers, producers and local communities. Therefore, it was a well-founded demand from beneficiaries of geographical indications to have guarantees that their legitimate interests would be preserved in the new generic DNS. While the new legal rights protection mechanism, recently introduced, was available to business operators protecting their geographical indications on the basis of trademark law, the Delegation of Hungary stressed the fact that holders of geographical indications under *sui generis* systems had no possibility to protect their rights. Consequently, the Delegation of Hungary, together with the co-sponsoring delegations, suggested opening discussions regarding both issues at the next session of the SCT, namely the limited nature of the list of important geographical names administrated by ICANN and the possible extension of the scope of WIPO UDRP to country names and geographical indications, so as to create a solid basis to the discussions and make available updated information to delegations and observers. The Delegation of Hungary and the co-sponsoring delegations proposed that the SCT request the Secretariat to conduct studies on these issues. Finally, while it was pleased that the proposal met the main interests of geographical indications stakeholders, as mentioned by the Representative of ORIGIN, the Delegation of Hungary understood that detailed discussions would only take place at the next session of the SCT, due to the late submission of the proposal.

197. The Delegation of Singapore, commenting the proposal by the Delegation of the United States of America, believed that it could be useful to examine how application system under the Lisbon system worked with *sui generis* protection system as well as with the trademark system or others means of protection. Concerning the proposal by the Delegations of the Czech Republic, Germany, Hungary, Italy, Republic of Moldova and Switzerland, the Delegation of Singapore noted that protection against conflicting domain names existed under trademark systems, but not under *sui generis* systems for the protection of geographical indications. Consequently, the Delegation of Singapore considered that both studies were valuable and would be useful, in particular for small offices, like his own, so as to get an update of earlier studies conducted by the SCT and information as to the protection against conflicting domain names for *sui generis* systems.

198. The Delegation of the European Union, on behalf of the European Union and its member states, thanked the Delegations of the Czech Republic, Germany, Hungary, Italy, Republic of Moldova and Switzerland for their excellent proposal for work on geographical indications and DNS. Noting that the proposal had already gained support from a number of delegations, the Delegation of the European Union considered that it should serve as a basis for the future work of the SCT under this agenda item.

199. The Delegation of Italy, as to the reason for opposing to the idea of a study under the proposal by the Delegation of the United States of America, observed that, according to a certain number of delegations, the work of the SCT would be more usefully focused on practical

issues, like the protection of geographical indications and country names in the DNS. Representatives of users had indicated that these issues were concrete and actual. Therefore, the Delegation of Italy expressed its wish to have activity on these items.

200. The Delegation of France said that it was fully in favor of the proposal by the Delegations of the Czech Republic, Germany, Hungary, Italy, Republic of Moldova and Switzerland for review and expansion of the process under the UDRP to geographical indications. The Delegation considered that the study would represent a good basis for work at future sessions of the SCT.

201. The Delegation of Portugal expressed its strong support for the proposal contained in document SCT/31/8 Rev., which was considered as a constructive basis for the future work of the SCT.

202. The Delegation of the Czech Republic, on behalf of the CEBS Group, thanked the co-sponsoring delegations for the proposal contained in document SCT/31/8 Rev. and lent its strong support to the latter. In its view, the proposal reflected well-grounded concerns as to the limited role of member states in shaping the system of protection of geographical indications on the Internet. Since domain names had a substantial and growing impact on consumers behavior in developed as well as in developing countries and LDCs, the Delegation of the Czech Republic considered that the issues contemplated by the proposal, namely expanding the scope of the WIPO UDRP to country names and geographical indications, were appropriate for further discussions within the Committee. Misleading use of geographical indications and important geographical names as domain names was a practice against which right holders had little or no means to fight at the international level. The Delegation added that the limited nature of the list of important geographical names administered by ICANN should also be taken into consideration.

203. The Delegation of Romania, aligning itself with the Delegations of France, Portugal, the European Union and other delegations, said that it fully supported the proposal by the Delegations of the Czech Republic, Germany, Hungary, Italy, Republic of Moldova and Switzerland. Sharing the view that shortcomings in the current system prevented an efficient protection of intellectual property rights, the Delegation of Romania considered that the proposal could be a suitable basis for future discussions within the Committee.

204. The Delegation of Ukraine expressed its support for the proposal by the Delegations of the Czech Republic, Germany, Hungary, Italy, Republic of Moldova and Switzerland, as contained in document SCT/31/8 Rev. Underlining the great interest and importance of the document, the Delegation said that it looked forward to taking part in the related discussions.

205. The Delegation of Uruguay, on behalf of GRULAC, wished to thank the Delegations of the Czech Republic, Germany, Hungary, Italy, Republic of Moldova and Switzerland for their proposal. The Delegation declared that it had not had sufficient time to appraise the document and, hence, suggested to come back to it at the next session of the SCT.

206. The Delegation of Poland, expressing its gratitude to the Delegations of Hungary and the other co-sponsoring delegations for having submitted to the Committee the proposal contained in document SCT/31/8 Rev., lent its full support to it. Misleading use of geographical indications and other important geographical names as domain names constituted a practice that right holders had little or no means to fight against at international level. The Delegation said that member states and producers should have full rights to a system that would protect geographical indications on the Internet. Underlining the fact that domain names represented

an important part of each and every economy, the Delegation of Poland considered that the issues addressed by the proposal, namely extending the scope of WIPO UDRP to country names and geographical indications, were appropriate for further discussions within the Committee.

207. The Delegation of Switzerland, as co-sponsor of the proposal, aligned itself with the statement by the Delegation of Hungary in introducing document SCT/31/8 Rev. As already said in previous sessions of the SCT, the Delegation of Switzerland believed that it was appropriate for the Committee to discuss geographical indications and the UDRP, which currently applied only to domain names and trademarks conflicts. The Delegation wished to keep this item on the agenda of the SCT in the mid-to long term. In its opinion, studies as outlined in document SCT/31/8 Rev. should be launched. As already observed in the past for trademarks, geographical indications were also subject of abusive practice or registration as domain names by persons having no connection with the products or services in the geographical area concerned. This was harmful for both the geographical indications as well as for the credibility of the system. Taking into account the developments made by ICANN, the Delegation of Switzerland stressed the urgency of the work and added that it was time that geographical indications be protected in the DNS. In its view, representatives of users and WIPO had a main role to play. Understanding that delegations needed more time to study the proposal, the Delegation of Switzerland looked forward to further discussing it at the next session of the SCT.

208. The Delegation of Italy, as co-sponsor of the proposal reflected in document SCT/31/8 Rev., added its voice to the statements made by the Delegation of Hungary and other co-sponsoring delegations. The Delegation of Italy recalled that, at the last session of the SCT, it had proposed to discuss the protection of geographical indications in the DNS. In the past years, this topic was identified by the Committee as the one to consider after requested work and clarification on geographical indications protection had been done. The protection of country names in the DNS had then also been discussed. The Delegation stressed the fact that these matters appeared as more urgent today, in the light of the expansion of top-level domain names and, particularly, of the issuance of new generic top-level domain names. The Delegation reminded that, already in the first and second WIPO Internet Domain Name Processes, it had been recognized that the practice of abusive registration of domain names extended to intellectual property rights, other than trademarks and service marks, as well as to country names. It had also then been acknowledged that abuses in registration of geographical indications and country names were similar, if not identical, to those observed in relation to trademarks and service marks. Widespread evidence had been found of the registration and use of geographical indications or country names by persons having no connection with the country or locality to which identifiers referred for the purposes of unduly exploiting the reputation, of renting or selling a domain name at a premium, or even of preventing others from registering the same name. The Delegation of Italy indicated that WIPO provided remedies for trademarks and service marks, such as the UDRP. In the past sessions of the SCT, the possibility of having a better protection of geographical indications and country names in case of cybersquatting had been considered by the membership. Among the options, the broadening of the scope of the UDRP had been proposed. As mentioned by the Delegation of Hungary, it was difficult not to recognize today that the interests of trademark owners against conflicting domain names were preserved through an efficient and frequently used system, such as the UDRP, while the same possibility was not provided for individual States or owners of geographical indications. In addition, the Delegation of Italy expressed its concern as to the limited nature of the list of important geographical names administered by ICANN. The Delegation said that it was neither convinced by the faithful application of the list nor by the ambition of including all important geographical names. Finally, considering that the ICANN list should also include geographical indications, the Delegation said that it was no longer tenable to deny to producers using *sui generis* laws appropriate legal remedies to avoid misuses of their geographical indications in the DNS. Finally, the Delegation of Italy strongly believed that the work in this

area, namely the list of important geographical names administered by ICANN and the possible extension of the scope of WIPO UDRP to geographical indications and country names, would ensure equal protection and dignity to country names and to all intellectual property rights without undue discrimination, and would protect the needs of both producers and consumers.

209. The Delegation of Georgia expressed its support for the proposal made by the Delegations of the Czech Republic, Germany, Hungary, Italy, Republic of Moldova and Switzerland, considering that the extension of the UDRP to country names and geographical indications would be positive.

210. The Delegation of Jamaica, while thanking the Delegations of the Czech Republic, Germany, Hungary, Italy, Republic of Moldova and Switzerland for their proposal contained in document SCT/31/8 Rev., said that, the topic being of interest to it, additional time was required to review the document and consult with relevant stakeholders. The Delegation of Jamaica looked forward to having further discussion on this issue at the next session of the SCT.

211. The Delegation of the United States of America thanked the Delegations of the Czech Republic, Germany, Hungary, Italy, Republic of Moldova and Switzerland for their proposal. Recalling that it had opposed adding geographical indications to the UDRP since 2001 during the WIPO Internet Domain Name Process, the Delegation stated that its position had not changed. Taking into account the lack of work on geographical indications at the SCT combined with the one-sided geographical indication dialogue at the Lisbon Union, its opposition was further strengthened. The Delegation of the United States of America considered that there was a lack of understanding, facilitated by the inability of the SCT to take up discussions on geographical indications, which was demonstrated by not pursuing further information gathering. There continued to be uncertainty as to the scope of rights and territorial effects afforded to geographical indications. In its view, adding geographical indications to the UDRP was asking the arbitration panelists to carry out the work that governments had refused to do or had been unable to effectively resolve. UDRP panelists would be asked to create international law because governments could not agree. The Delegation considered that it would be irresponsible for governments to push unresolved work to the marketplace since the result would be to potentially cripple the UDRP for trademarks at a critical time for trademark owners, facing the expansion of the DNS. Finally, since the proposal had just been introduced, the Delegation of the United States of America underlined that the foregoing constituted its initial impressions and that it would provide the Committee with further comments at the next session of the SCT, if the proposal would then be discussed.

212. A number of delegations expressed support for the proposal to prepare a current survey on existing national geographical indication regimes presented by the Delegation of the United States of America in document SCT/31/7. Other delegations did not support this proposal.

213. Furthermore, the Delegation of Hungary presented a proposal jointly sponsored by the Delegations of the Czech Republic, Germany, Hungary, Italy, Republic of Moldova and Switzerland in document SCT/31/8 Rev. entitled "Protection of Geographical Indications and Country Names in the DNS". A number of delegations expressed support for that proposal. Other delegations indicated either that they needed more time to reflect on it, or that they could not support it.

214. The Chair concluded that, since delegations did not reach agreement on these issues, the SCT would revert to them at its next session.

AGENDA ITEM 8: CONTRIBUTION OF THE SCT TO THE IMPLEMENTATION OF THE RESPECTIVE WIPO DEVELOPMENT AGENDA RECOMMENDATIONS

215. The Delegation of Egypt, on behalf of the DAG, requested that the Development Agenda issue become an agenda item on the future meetings of this Committee. The Delegation recalled Development Agenda Recommendation 15, which stated that WIPO norm-setting activities should be inclusive and member-driven, take into account different levels of development, take into consideration a balance between costs and benefits, and be a participatory process, which takes into consideration the interests and priorities of all WIPO Member States and views of other stakeholders and be in line with the view of WIPO Secretariat. The Delegation said that Cluster A, also relating to technical assistance and capacity building, was addressed by delegations. Observing that the Chair proposal on technical assistance contained concrete provisions for the technical assistance article to be included in the DLT, the Delegation also welcomed the fact that the mandate given to the SCT by the General Assembly regarding the work on the text on technical assistance was observed. The DAG stated that it looked forward to further streamlining the text through resolving the existing brackets of some of the existing provisions regarding technical assistance and capacity building for developing countries and LDCs, and to the implementation of a possible future DLT treaty.

216. The Delegation of Japan, on behalf of Group B, said that it believed that the Development Agenda had been fully mainstreamed in the WIPO activities in the field of industrial design, trademark and geographical indications, including the work at the SCT. It believed that the work relating to the DLT during the SCT contributed to the Development Agenda relating to norm-setting, in particular Recommendation 15. The negotiations had been conducted in an inclusive and member-driven manner, and the negotiations had taken into account the study on the potential impact of the work of the SCT, including technical assistance, which gave due consideration to the level of developments and costs and benefits. The streamlining of the formalities of design applications could contribute to the improvement of the environment and, as a consequence, would enable more investors to enter into the market. The Delegation added that the implementation of the DLT would benefit developing countries and LDCs, especially SMEs in those countries. Group B further stated that the work done at the SCT on trademarks and geographical indications also contributed to an increased understanding. The Delegation also said that an increased investment in the economy would promote economic development, which was a goal achieved through the implementation of the Development Agenda. In conclusion, Group B believed that that the Development Agenda could continue to be implemented in a positive way in the field of the SCT.

AGENDA ITEM 9: ADOPTION OF THE SUMMARY BY THE CHAIR

217. The Delegation of Kenya, on behalf of the African Group, thanked the Chair for its Summary and agreed to the changes that had been proposed in particular the use of the term “cleaning up”, which did not imply that the draft DLT was mature. The Delegation also hoped that other delegations would come ready to the General Assembly to be flexible to agreeing on an article in order to be able to conclude and move forward.

218. The Delegation of the European Union, on behalf of its member states, with respect to paragraph 9 of the Summary by the Chair for agenda item 5, was of the view that all delegations that had taken the floor were in favor of convening a diplomatic conference, although there was not yet a full convergence of views on sequencing. This had been the conclusion of the Chair at the thirtieth session of the SCT, reflected in document SCT/30/8, paragraph 12. The Delegation stated that it did not like to think that the SCT had gone back from this position, and hence thought it more accurate for the paragraph to open with the wording “Concerning the convening of a diplomatic conference for the adoption of a DLT, the Chair noted delegations were in favor

of the principle of convening such a diplomatic conference". Regarding the last sentence of paragraph 9, the Delegation thought that it would inform the Extraordinary General Assembly's decision making were it reflected that "delegations were of the view that given the considerable progress on the provision of technical assistance, the draft treaty was mature enough in order to allow for the convening of a diplomatic conference". With respect to paragraph 10, rather than concluding that the SCT had just made "further progress", the Delegation thought that it was more accurate to conclude that the SCT had "finalized the substance of the DLT at expert level". In conclusion, the Delegation noted that agreement had been reached on the text that the Chair proposed under this agenda item.

219. The Delegation of the Czech Republic, on behalf of the CEBS Group, took note of the work and achievements of this week. With regards to the DLT, the Delegation believed that the significant progress had led to finalization of the work on the expert level of this Committee as mandated by the December 2013 Extraordinary General Assembly. It believed that it was now up to the May extraordinary session of the General Assembly to convene a diplomatic conference, of which all delegations had been in favor for a number of months as reflected in the Summary by the Chair from the previous session (document SCT 30/8, paragraph 12). The Delegation further noted that finalization of this treaty was long awaited by users across regions. In this light, the Delegation would prefer to see strengthening of the Chair's Summary along the lines suggested by the Delegation of the European Union, but it respected this Summary by the Chair and could agree with it.

220. The Delegation of Kenya, on behalf of the African Group, stated that the draft text on industrial designs had currently captured a high level of uncertainty as to what the final form of this treaty would be. The proposal presented two possibilities. The first possibility was one where all the issues were provided in draft Articles and therefore had the same legal status. The second one was where some issues were reflected in draft Articles and others in a resolution. In determining therefore the level of maturity, the question for its Delegation was whether the position of the group would be the same if the DLT contained articles or a combination of articles and resolution. Given the level of uncertainty and ambiguity introduced by the possibility of having a Treaty which combined both articles and resolution, for the African Group the answer to that question would be a definite no. The view of the Delegation would be different if the treaty contained only draft Articles, which would create internal harmony and balance in the treaty. In conclusion, the Delegation stated that such work was best suited within the work of the Committee and not in a diplomatic conference. In this regard, the Delegation considered that the draft treaty was not mature.

221. The Delegation of South Africa, endorsing the statements made by the African Group, reiterated the view that the issue of technical assistance as an article should be resolved prior to convening a diplomatic conference. Thus, the Delegation called all the other delegations that had been resisting for technical assistance to be in the form of an article, to show flexibility in May, as the African Group had shown during this session. Then, if that flexibility was demonstrated by other delegations, they would be in a position to move towards conclusion of this process. If there was no flexibility from other delegations, the delegation of South Africa doubted they would ever be able to move forward on this issue.

222. The Delegation of Japan, on behalf of Group B, stating that it could go along with the modified version of the Chair's summary, said that it would nonetheless like to express its position on the Chair's Summary. The Delegation, underlining the positive atmosphere on the DLT and the significant progress achieved at the session, said that the Summary could have been made in a more accurate manner. As for the diplomatic conference, the Delegation drew attention to the fact that paragraph 12 of the Summary by the Chair, at the last session, clearly said that the "Chair noted that all Delegations that had taken the floor were in favor of convening such a diplomatic conference". The Delegation observed that the current version of the Summary might give a misimpression to the outside. The Delegation further underlined that as

repeatedly mentioned by the Chair, this session of the SCT fully fulfilled the mandate given by the General Assembly, and significant progress had been made throughout this session. In conclusion, Group B stated that this fact could have been reflected in a more accurate and prolific manner in paragraph 10 of the Summary by the Chair.

223. The Delegation of Uruguay, on behalf of the Group of Countries of Latin America and the Caribbean (GRULAC), acknowledging the progress made during this session, welcomed the flexibility and constructive attitude shown during the discussions. The text was more understandable than the previous one, and technical assistance was in there. The Delegation, underlining the fact that its Group wanted to be flexible irrespective of the form that would be chosen, stated that it was in favor of convening a diplomatic conference.

224. The Delegation of Egypt observed that the Summary by the Chair clearly represented everything that had been said and all the decisions that had been made, clearly reflecting that no delegation objected to technical assistance.

225. The Delegation of Bangladesh, on behalf of the Asia and Pacific Group, said that its Group would be ready to accept any legally binding provision whether it was an article or a resolution.

226. The Delegation of Peru, agreeing with the statements made by the Delegation of Uruguay as coordinator of GRULAC, added that its Delegation was flexible about the final form of technical assistance in an article or a resolution as long as it would be legally binding.

227. The Delegation of Spain, concurring with the statements made by the Delegations of the European Union, Group B, GRULAC and CEBS Group, expressed its reasonable satisfaction with the Summary by the Chair. The Delegation said that it was a little bit worried about a previous statement making the diplomatic conference dependent upon obtaining a position. The Delegation, recalling that the delegations of Spain and the European Union were ready to have an article, considered that the fact that this issue had not been yet decided did not prevent them from considering that much progress had been made. Observing that its Delegation was not closing off the possibility of having an article, the Delegation asked delegations to go to the extraordinary General Assembly with a constructive position, leaving behind them maximalist and ultimatum positions.

228. The Delegation of Venezuela (Bolivarian Republic of), endorsing the statement made by the Delegation of GRULAC, said that it supported the Summary proposed by the Chair.

229. The Delegation of India, as a member of the Asia and Pacific Group, thanked the Chair for its leadership and the balanced statement he had prepared. The Delegation, for clarification with regards to the statement made by the Asia and Pacific Group, stated that it was in favor of an article.

230. The Delegation of Iran (Islamic Republic of) considered that the diplomatic conference could be convened once the text would be mature enough, in particular when the technical assistance and capacity building issue would be resolved.

231. The Delegation of Trinidad and Tobago aligned itself with the statement made by the Delegations of GRULAC, Peru and Venezuela (Bolivarian Republic of). The Delegation said that although its country had preferred a legally binding article for technical assistance in the past, after listening to all delegations, it could now be flexible on an article or a resolution since it believed there was an effective provision for technical assistance and capacity building.

232. The Delegation of Brazil thanked the Chair for its Summary which reflected with good precision the discussions. Welcoming the progress the Committee had made on the text, the Delegation said that the text was still work in progress and that the perception about its level of maturity should be assessed at each step, including the form of the provision on technical assistance and capacity building.

233. The Delegation of the United States of America, underlining that the Chair's Summary captured the open mindedness of many delegations, observed that, unfortunately, there seemed to be an understanding by other delegations that the technical form of the provisions was tied to the legal result or to the certainty of these provisions. Stating that it had shown a maximum of flexibility, the Delegation said that it remained open minded as to the form of the technical assistance provision, concurring with the Delegation of Trinidad and Tobago and others that had expressed this open mindedness. The Delegation encouraged other delegations to show the same flexibility.

234. The SCT approved the Summary by the Chair as presented in document SCT/31/9.

AGENDA ITEM 10: CLOSING OF THE SESSION

235. The Chair closed the session on March 21, 2014.

[Annexes follow]



SCT/31/9
ORIGINAL: ENGLISH
DATE: MARCH 21, 2014

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

Thirty-First Session
Geneva, March 17 to 21, 2014

SUMMARY BY THE CHAIR

adopted by the Committee

AGENDA ITEM 1: OPENING OF THE SESSION

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

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

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

AGENDA ITEM 3: ADOPTION OF THE AGENDA

4. The SCT adopted the revised draft Agenda (document SCT/31/1 Prov.2) with the addition of one item entitled "Contribution of the SCT to the implementation of the respective WIPO Development Agenda Recommendations".

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE THIRTIETH SESSION

5. The SCT adopted the draft report of the thirtieth session (document SCT/30/9 Prov.).

AGENDA ITEM 5: INDUSTRIAL DESIGNS

6. Discussions were based on documents SCT/31/2 and 3.
7. The Committee reviewed in detail all provisions which were presented within brackets, or for which footnotes indicated individual proposals or reservations of individual delegations. The Chair stated that all statements made by delegations would be recorded in the report of the thirty-first session.
8. With regard to technical assistance and capacity building, all delegations stated that progress was made on this matter. A number of delegations expressed the view that technical assistance provisions had to be in the form of an article. On this particular issue, other delegations said they were flexible. Some other delegations said that, although they preferred a resolution, they would consider an article, but not as a precondition for convening a diplomatic conference.
9. Concerning the convening of a diplomatic conference for the adoption of a DLT, while a number of delegations were of the view that an agreement to address technical assistance in the form of an article in the treaty had to be reached prior to convening such a diplomatic conference, other delegations were of the view that the draft Treaty was mature enough in order to convene a diplomatic conference.
 10. The Chair concluded that the SCT had made further progress towards cleaning up the draft DLT and that the WIPO General Assembly, at its extraordinary session in May, will take stock of, and consider the text, progress made and make its decision.

AGENDA ITEM 6: TRADEMARKS

Proposal by the Delegation of Jamaica

11. Discussions were based on document SCT/31/4.
12. A number of delegations expressed support for the proposal presented by the Delegation of Jamaica in document SCT/31/4, although some of them were of the view that the proposal needed to be further developed. Other delegations considered that it was premature to start text-based negotiations on this matter and preferred that further analysis be devoted to related issues, such as the consequences of any additional protection on currently applied trademark rules and procedures. The Delegation of Jamaica indicated that it was prepared to further develop its proposal and to submit it to the next session of the SCT.
 13. The Chair concluded that the SCT would consider a revised version of the proposal by the Delegation of Jamaica at its thirty-second session. In preparation for that session, the Delegation of Jamaica, with the assistance of the Secretariat, would amend its proposal taking into account the comments made at the present session as well as with additional comments to be provided by delegations in writing, prior to the thirty-second session of the SCT.

Update on Trademark-Related Aspects of the Domain Name System

14. Discussions were based on document SCT/31/6.

15. The SCT took note of document SCT/31/6 and the Secretariat was requested to keep Member States informed on future developments in the DNS.

AGENDA ITEM 7: GEOGRAPHICAL INDICATIONS

16. Discussions were based on documents SCT/31/7 and SCT/31/8 Rev.

17. A number of delegations expressed support for the proposal to prepare a current survey of existing national Geographical Indication regimes presented by the Delegation of the United States of America in document SCT/31/7. Other delegations did not support this proposal.

18. Furthermore, the Delegation of Hungary presented a proposal jointly sponsored by the Delegations of the Czech Republic, Germany, Hungary, Italy, Republic of Moldova, and Switzerland in document SCT/31/8 Rev. entitled "Protection of Geographical Indications and Country Names in the DNS". A number of delegations expressed support for that proposal. Other delegations indicated either that they needed more time to reflect on it, or that they could not support it.

19. The Chair concluded that, since delegations did not reach agreement on these issues, the SCT would revert to them at its next session.

AGENDA ITEM 8: CONTRIBUTION OF THE SCT TO THE IMPLEMENTATION OF THE RESPECTIVE WIPO DEVELOPMENT AGENDA RECOMMENDATIONS

20. Declarations on the contribution of the SCT to the implementation of the respective WIPO Development Agenda Recommendations were made. The Chair stated that they would be recorded in the report for the thirty-first session of the SCT and transmitted to the WIPO General Assembly.

AGENDA ITEM 9: SUMMARY BY THE CHAIR

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

AGENDA ITEM 10: CLOSING OF THE SESSION

22. The Chair closed the session on March 21, 2014.

[Annex II follows]



SCT/31/INF/1
ORIGINAL: FRANCAIS/ANGLAIS
DATE: 21 MARS 2014 / MARCH 21, 2014

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

**Trente et unième session
Genève, 17 – 21 mars 2014**

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

**Thirty-First Session
Geneva, March 17 to 21, 2014**

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prepared by the Secretariat*

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