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Negotiating Group on Trade-Related Aspects
of Intellectual Property Rights, including
Trade in Counterfeit Goods

EXISTENCE, SCOPE AND FORM OF GENERALLY INTERNATIONALLY ACCEPTED AND APPLIED STANDARDS/NORMS FOR THE PROTECTION OF INTELLECTUAL PROPERTY

Note Prepared by the International Bureau of WIPO

Addendum

The following document, dated 10 June 1988, has been received from the Director General of the World Intellectual Property Organization. A further part, concerning neighbouring rights, will be issued as Addendum 2.

INTRODUCTION

The present document has been prepared by the International Bureau of the World Intellectual Property Organization (WIPO) as a continuation of document MTN.GNG/NG11/W/24.

It contains two parts, namely, on industrial designs (starting on page 2) and on geographical indications (starting on page 11). A further part, dealing with neighbouring rights, will be furnished later in June 1988.

PART V: INDUSTRIAL DESIGNS

1. Subject matter to which right applies/does not apply

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention for the Protection of Industrial Property (hereinafter referred to as the "Paris Convention"), which was concluded in 1883 and last revised in 1967, provides that industrial designs are one of the objects of industrial property. In one of its provisions, which binds eighty-seven of the ninety-eight member States1 (those which are bound by Acts subsequent to 1934), the Paris Convention obliges member States to protect industrial designs. The other eleven member States are not bound by this provision because it is contained in Acts subsequent to 1934 by which they are not bound. Nothing is said in that provision about the means of providing such protection, so that countries may comply with the provision not only through special legislation for the protection of industrial designs, but also through the grant of such protection, for example, in their laws on copyright or their provisions against unfair competition.

The WIPO Model Law for Developing Countries on Industrial Designs (hereinafter referred to as the "WIPO Model Law") provides for a protection of industrial designs on the basis of registration. According to the WIPO Model Law, any composition of lines or colours or any three-dimensional form, whether or not associated with lines or colours, is deemed to be an industrial design, provided that such composition of form gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft. The protection does not extend to anything in an industrial design which serves solely to obtain a technical result.

(ii) Current WIPO activities

The model provisions for national laws submitted to the WIPO Committee of Experts on Measures Against Counterfeiting and Piracy (April 1988) provide, in particular, for protection of industrial designs against unauthorized reproduction or slavish or near-slavish imitation.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

Industrial designs are generally protected by virtue of a registration made pursuant to industrial design law (or patent law in countries, like

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1The list of the States party to the Paris Convention is contained in Annex I of document MTN.GNG/NG11/W/24.
the United States of America, where "design patents" are granted). In
some countries, like France, industrial designs can also be protected through copyright law, such a protection requiring no registration.

Most countries have a national registration system, for instance: Algeria, Argentina, Australia, Austria, Bulgaria, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Ecuador, Egypt, France, Germany (Federal Republic of), German Democratic Republic, Hungary, India, Iraq, Ireland, Israel, Italy, Japan, Lebanon, Mexico, Monaco, Morocco, Nigeria, New Zealand, Nordic countries, Pakistan, Peru, Poland, Portugal, Republic of Korea, Spain, Sweden, Switzerland, Thailand, Tunisia, Soviet Union, United Kingdom, United States of America, Yugoslavia, Zaïre, Zimbabwe.

Regional registration systems have been set up by the Benelux countries, by the member countries of the African Intellectual Property Organization (OAPI) and in the framework of the African Regional Industrial Property Organization (ARIPO).

2. Criteria for obtaining protection

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to apply, under the national treatment principle, the same criteria to the nationals and residents of other member States as to its own nationals. The Paris Convention also provides for a right of priority to the benefit of applicants from member States for filing applications for the registration of their industrial designs abroad. It furthermore grants temporary protection to industrial designs in respect of products exhibited at certain exhibitions.

Under the WIPO Model Law, industrial designs must be new to be eligible for protection. Industrial designs that are contrary to public order or morality are not protected. Certain disclosures do not affect, under certain conditions, the novelty of an industrial design. Industrial designs are protected upon registration.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In most countries, foreigners have access to the system of protection of industrial designs without restriction (other than a possible requirement to be represented by a local agent).

Novelty and/or originality of appearance are criteria for registrability applied throughout the world. Purely technical aspects of
the products are generally not protected. Industrial designs which are contrary to public order and morality are generally not eligible for protection.

3. Duration/cost of procedures for obtaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to grant a period of grace for the payment of the fees prescribed for the maintenance of the registration of an industrial design. That period of grace must not be less than six months for eighty-seven member States (those which are bound by Acts subsequent to 1934), and not less than three months for eleven member States (those which are not bound by Acts subsequent to 1934).

The Hague Agreement Concerning the International Deposit of Industrial Designs (hereinafter referred to as the "Hague Agreement"), which has twenty-one member States1, offers substantial advantages concerning the duration and cost of procedures by providing for the possibility of international registration of industrial designs. Compared with registration in each of the member States of the Hague Agreement, international registration has the advantage of being much simpler and much cheaper.

The WIPO Model Law offers a choice to national laws as regards the examination of applications: they may provide for registration upon examination of formal requirements without examination of the application as to substance, or for registration after an opportunity for opposition is given, or for registration after examination of the application as to substance. The duration of the procedure for obtaining the right will therefore depend on the kind of procedure chosen.

(ii) Current WIPO activities

In the framework of the ongoing revision of the Paris Convention, it is considered whether to introduce into that Convention provisions under which industrial design applicants from developing countries would benefit from a 50 per cent reduction of the fees payable for the registration procedure.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The duration of the procedure for the registration of industrial designs depends on various factors, including in particular the kind of

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1The list of the States party to the Hague Agreement is contained in Annex I of this document.

examination effected by the Patent Office (merely formal examination, substantive examination, possibility of opposition, etc.). The average duration of procedure ranges from one week to more than three years. As examples, the following countries may be mentioned: Brazil (ordinary procedure: 42 months; special procedure: 11 months), Canada (8.5 months), China (10.5 months), Egypt (1 month), Germany (Federal Republic of) (1 week - if no irregularity - to 2.5 months), Hungary (12 to 15 months), Japan (27 months), Sweden (11 months), Switzerland (2 months), Thailand (18 months), United Kingdom (6 months), United States (30 months).

The average cost of the procedure for registration (not including agents' fees) of an industrial design in respect of one article ranges, among a sample of countries of different levels of development and from various continents, from approximately Sw F 3 to approximately Sw F 230. It is to be noted that in a number of countries such "registration fee" may include cost of publication and cover an initial period of the duration of

registration.

4. Scope of right conferred

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to grant to nationals and residents of the other member States, under the national treatment principle, the rights it grants to its own nationals.

The WIPO Model Law provides that the registration of an industrial design confers upon its registered owner the right to preclude third parties from reproducing the industrial design in the manufacture of a product, from importing, offering for sale and selling a product reproducing the industrial design, and from stocking such a product for the purposes of offering it for sale or selling it.

Under the WIPO Model Law, the right extends only to acts done for industrial or commercial purposes and does not extend to acts in respect of a product embodying the protected industrial design after the product has been lawfully imported or sold in the country.

(ii) Current WIPO activities

See item 1(ii), above.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In the countries providing for the registration of industrial designs, the exclusive right conferred by registration may be described in general terms as implying that no one may, without the registrations's owner consent, use the design commercially by manufacturing, importing, offering for sale, selling or leasing an article the appearance of which does not substantially differ from the design. This is, however, limited to articles for which the design has been registered.

5. Duration of right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the 1934 Act of the Hague Agreement, the term of protection is fifteen years from the date of the international deposit. Under the 1960 Act of that Agreement, the term of protection may not be less than ten years from the date of international deposit if the deposit has been renewed (i.e., the renewal fees have been paid), or five years from the date of international deposit in the absence of renewal; for any member State whose national legislation allows a term of protection longer than ten years for national deposits, the international deposit may be renewed several times, each time for an additional five-year period, until the expiration of the total period of protection allowed for national deposits by the domestic law.

Under the WIPO Model Law, the duration of the registration of an industrial design is five years from the date of application with a possibility of renewal for two further consecutive periods of five years each.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The duration of registration of industrial designs varies significantly from country to country and ranges between three and
fifty years.

A number of countries provide for short (less than 10 years) duration of registration. They are, for example, Republic of Korea (8 years), Iraq and Thailand (7 years), Bulgaria, Colombia, Costa Rica, Ecuador, Democratic People's Republic of Korea and Peru (5 years), Austria (3 years).

In Canada and Zaïre, the duration of a registration is ten years. A duration of fifteen years is provided for by the legislation of the following countries: Benelux countries, Germany (Federal Republic of), Nordic countries, Switzerland, United Kingdom, Zimbabwe, member countries of OAPI. Longer registrations are available in Spain (20 years), France, Lebanon, Morocco and Monaco (up to 50 years), Portugal (unlimited duration subject to renewals).

In most countries, registration is made for a short initial period and may be renewed for subsequent(s) period(s) up to the maximum duration provided for by the national legislation.

6. Cost of procedures for maintaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to grant a period of grace for the payment of maintenance fees. That period of grace must not be less than six months for eighty-seven member States (those which are bound by Acts subsequent to 1934), and not less than three months for eleven member States (those which are not bound by Acts subsequent to 1934).

Under the Hague Agreement, renewal of an international deposit is effected by the mere payment of the relevant fees.

Under the WIPO Model Law, the registration of an industrial design may be renewed for two further consecutive periods of five years merely by paying the relevant fee.

(ii) Current WIPO activities

In the framework of the ongoing revision of the Paris Convention, it is considered whether to introduce into that Convention provisions under which industrial design owners from developing countries would benefit from a 50 per cent reduction of the fees payable for the renewal of registrations.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

In most countries, renewal is effected without any procedure of examination through the mere payment of a renewal fee. Renewal fees vary from country to country. The fee for fifteen years in respect of one industrial design ranges, among a sample of countries of different levels of development and from various continents, from approximately Sw F 5 to approximately Sw F 2,850.

7. Compulsory licensing

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention does not contain any provision on compulsory licensing in the field of industrial designs. However, it provides that the protection of industrial designs shall not, under any circumstances, be subject to any forfeiture, either by reason of failure to work or by reason of the importation of articles corresponding to those which are protected.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

Compulsory licences for non-working or in the public interest are provided for in the laws of the following countries: Algeria, Australia, Brazil, Bulgaria, Cuba, Czechoslovakia, Republic of Korea, Mexico, New Zealand, Nigeria, South Africa, Soviet Union, Sweden, United Kingdom, Zambia, Zimbabwe and member countries of OAPI.

Compulsory licences based on other grounds exist in a certain number of countries, for example:

- Compulsory licences for prior users, i.e., persons who started to use the industrial design before an application for its registration has been filed may, when the application leads to registration, obtain a compulsory licence to use the design (e.g., Nordic countries);

- compulsory licences in case of interdependence of industrial designs, i.e., where an industrial design cannot be worked without making use of the registered industrial design of another person (e.g., Japan).

8. Procedures available for enforcement of rights and remedies/sanctions in cases of infringement

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to grant to nationals and residents of the other member States, under the national treatment principle, the same legal remedies against any infringement of their rights as those it grants to its own nationals, possibly subject to the provisions of the national law relating to judicial and administrative procedure and to jurisdiction.

The WIPO Model Law contains provisions on civil procedures and remedies, as well as criminal

sanctions. As regards the former, court proceedings can be instituted not only in case of actual infringement but also in case of imminent infringement; the civil remedies include compensation of damages and any other sanction provided for in the civil law. As regards criminal sanctions, infringement is treated as an offence punishable by a fine or by imprisonment, or both.

(ii) Current WIPO activities

The model provisions for national laws submitted to the WIPO Committee of Experts on Measures Against Counterfeiting and Piracy (April 1988) contain provisions on conservatory measures, on civil remedies and on criminal sanctions to be applied in case of counterfeiting. The following conservatory measures are proposed: seizure of the counterfeit goods, sealing of the premises where acts of counterfeiting take place, seizure of the tools for the manufacturing or packaging of the counterfeit goods and of papers referring to such goods, ordering the termination of the acts of counterfeiting, ordering disclosure of the source of the counterfeit goods. The civil remedies which are proposed are compensation of damages, payment of legal costs (including lawyers' fees) and, subject to certain conditions, destruction of the counterfeit goods and of tools able to be used to continue acts of counterfeiting, as well as ordering the non-continuation of acts of counterfeiting. As regards criminal sanctions, any act of counterfeiting is qualified as an offence; under one alternative, the sanction is, where the act of counterfeiting was committed with criminal intent, the same punishment as that provided for theft, otherwise a fine; under another alternative, the sanction is imprisonment or a fine, or both.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The following civil remedies are provided for in, for example, the countries indicated hereafter:

- injunction: Australia, Bulgaria, Canada, Hong Kong, Ireland, Japan, New Zealand, member countries of OAPI;

- compensation of damages: Australia, Bahamas, Benelux countries, Bulgaria, Canada, France, German Democratic Republic, Germany (Federal Republic of), Hong Kong, Ireland, Japan, Republic of Korea, Monaco, New Zealand, Nordic countries, Syria, United States, member countries of OAPI.

Criminal sanctions (imprisonment and/or fine) are provided for in, for example, the following countries: Bulgaria, Canada, France, Japan, Monaco, Nordic countries, Western Samoa, Syria, member countries of OAPI. Generally criminal sanctions are available in case of intentional infringement.

9. International dispute settlement mechanisms

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Paris Convention, which, in this respect, binds seventy-two States, the International Court of Justice is competent to decide on any dispute between two or more member States concerning the interpretation or application of the Convention, unless such dispute is settled by negotiations or otherwise. The other twenty-six States party to the Paris Convention are not bound by the provisions establishing the jurisdiction of the International Court of Justice.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

To the extent that "international dispute settlement mechanisms" refer to disputes between States on the implementation of their treaty obligations, there are no commonly applied national provisions and practices.

PART VI: GEOGRAPHICAL INDICATIONS

Introduction

In this document, the expression "geographical indications" means both indications of source and appellations of origin.

"Indication of source" means any expression or sign used to indicate that a product or service originates in a country, a region or a specific place. "Appellation of origin" means the geographical name of a country, region or specific place which serves to designate a product originating therein the characteristic qualities of which are due exclusively or essentially to the geographical environment, including natural and human factors. Appellations of origin are a special kind of indications of source: all appellations of origin are indications of source, but not all indications of source are appellations of origin. Consequently, what is said in this document about indications of source also applies to appellations of origin as a special kind of indications of source.

1. Subject matter to which right applies/does not apply

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention for the Protection of Industrial Property (hereinafter referred to as the "Paris Convention"), which was concluded in 1883 and last revised in 1967 and which has ninety-eight member States1, provides that indications of source or appellations of origin are among the objects of industrial property.

In one of its provisions, which binds eighty-seven States (those which are bound by Acts subsequent to 1934), the Paris Convention obliges member States to apply the remedies and sanctions described under item 8(i), below, in cases of direct or indirect use of a false indication of the source of goods. The other eleven member States (those which are not bound by Acts subsequent to 1934) are obliged to apply the said remedies and sanctions in cases where goods falsely bear as an indication of source the name of a specified locality or country, when such indication is joined to a trade name of a fictitious character or used with fraudulent intention.

The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (hereinafter referred to as the "Madrid Agreement (Indications of Source)"), which was concluded in 1891 and

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1The list of the States party to the Paris Convention is contained in Annex I of document

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revised several times, obliges its thirty-two member States1 to apply the remedies and sanctions described under item 8(i), below, in cases where goods bear a false - or, in the case of twenty-nine member States (those which are bound by Acts subsequent to 1925), a false or deceptive - indication by which one of the member States, or a place situated therein, is directly or indirectly indicated as being the country or place of origin.

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (hereinafter referred to as the "Lisbon Agreement"), which was concluded in 1958 and revised in 1967, obliges its sixteen member States2 to protect appellations of origin of products of the other member States, recognized and protected as such in the country of origin and registered at the International Bureau of WIPO.

The Model Law for Developing Countries on Appellations of Origin and Indications of Source published by WIPO in 1975 (hereinafter referred to as the "Model Law") contains model provisions for the protection of geographical indications in national law.

(ii) Current WIPO activities

Within the framework of the current revision of the Paris Convention, an amendment of that Convention has been adopted by a Main Committee of the Diplomatic Conference to the effect that the registration or use of official names of States as trade marks is to be prohibited. That amendment still requires final adoption by the Diplomatic Conference. In addition, it is being considered that in the Paris Convention a provision should be inserted which would clarify, and to some extent reinforce, the protection provided for under that Convention for geographical indications by establishing the principle that geographical indications may not be used or registered as trade marks if such use is likely to mislead the public or if the geographical indication in question has a particular reputation for specific products.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

As regards appellations of origin, the sixteen member States of the Lisbon Agreement - and some other countries (including Argentina, Austria, Chile, Colombia, Greece, Morocco, Paraguay, South Africa, Spain and Yugoslavia) - provide for protection against any use of specified

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1The list of the States party to the Madrid Agreement (Indications of Source) is contained in Annex II of this document.

2The list of the member States of the Lisbon Agreement is contained in Annex III of this document.

appellations of origin even where such use - for example because of an indication of the true origin - does not mislead the public. The said
protection is typically based on a decision taken by the competent government agency or on a legislative act (decree, order or the like). Appellations of origin are, inter alia, used for the following products: wines, spirits, cheese, poultry, olives, cigars, and certain industrial products such as lace and enamels. The government decision or legislative act typically defines the geographical area to which the appellation of origin applies and the characteristic features of the product in respect of which the appellation of origin is used; in some countries, such as the United States, an appellation of origin is only defined by a reference to the geographical origin of the product but not also by a reference to the characteristic features or qualities of the product. The government decision or legislative act has effect only on the territory of the country by whose authority the said decision or act was adopted; effect in other countries can be achieved only through corresponding decisions or acts in those

other countries or through agreements between States (which are either multilateral agreements such as the Lisbon Agreement or bilateral agreements). In the absence of such a decision, act or agreement, foreign appellations of origin can only be protected as indications of source, whose protection - as will be seen below - requires that there is a risk of misleading consumers.

As regards indications of source, protection is based either on express legislative provisions or on general principles recognized by court decisions according to which indications that mislead consumers are to be prohibited. Thus, practically all countries provide for a protection of indications of source against misleading use.

However, a geographical indication which is considered as such (namely as a reference to the geographical origin of a product) in the country in which the area to which the indication refers is located, may be considered in other countries not as a geographical indication but rather as a generic designation, namely a designation of a kind of product, or as a "semi-generic" designation, namely a designation of a kind of product provided that a "delocalizing" indication is added (for example, "Chablis of California" and "New York State Champagne" in the United States) and that certain quality requirements are respected.

2. Criteria for obtaining protection

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges its ninety-eight member States to grant national treatment in respect of the protection of geographical indications.

The Madrid Agreement (Indications of Source) obliges its thirty-two member States to protect indications of source but the courts of a member State can decide that an indication of source is to be considered on the territory of that State as a generic term. However, regional appellations concerning the source of products of the vine cannot be considered as generic terms.

The Lisbon Agreement obliges its sixteen member States to protect appellations of origin which have been internationally registered. Appellations of origin which are protected as such in a member State can be registered internationally (by WIPO) at the request of the member State concerned, and such registration has effect in the other fifteen member States except in any State which, within one year after registration, notifies WIPO of its refusal of the said effect. Up to June 1988,
725 appellations of origin have been registered under the Lisbon Agreement and ninety refusals have been received by WIPO.

Under the Model Law, protection of appellations of origin is acquired through registration, or alternatively by special orders which are issued by the competent national authority. Indications of source are protected without a requirement of registration.

(ii) Current WIPO activities

See item 1(ii), above.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

See item 1(iii), above.

3. Duration/cost of procedures for obtaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Lisbon Agreement, international registration is effected by the International Bureau within two to four weeks upon receipt of the application for international registration. The fee for international registration is Sw F 300 per appellation.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

Whereas protection of indications of source is obtained automatically without any act by a government, the government decisions or legislative acts which are issued in some countries (for example, Algeria, France, Greece, Italy, Morocco, South Africa, Spain) in order to establish protection of appellations of origin require preparatory work of variable duration, but do not entail the payment of fees by those whose activities are to be protected by the relevant government decision or legislative act (for example, the producers of wine in a certain region). In countries that provide for the registration of appellations of origin (for example, Algeria and Israel), the duration and cost of the registration procedure is similar to the duration and cost of the procedure for the registration of trade marks.

4. Scope of right conferred

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

As regards the Paris Convention, see item 1(i), above.

As regards the Madrid Agreement (Indications of Source), see item 1(i), above. In addition, a provision of that Agreement obliges twenty-nine of its member States (those which are bound by Acts subsequent to 1925) to prohibit the use, in connection with the sale or display or offering for sale of any goods, of all indications in the nature of publicity capable of deceiving the public as to the source of the goods, and appearing on signs, advertisements, invoices, wine lists, business letters or papers or any other commercial communication; the other three member States are not bound by this provision because it is contained in Acts subsequent to 1925 by which they are not bound. Furthermore, under the said Agreement the vendor is not prevented from indicating his name or address upon goods coming from a country other than that in which the sale takes place; but in such case the address or the name must be accompanied by an exact indication in clear characters of the country or place of manufacture or production, or by some other indication sufficient to avoid any errors as to the true source of the wares.

The Lisbon Agreement obliges its sixteen member States to protect internationally registered appellations of origin against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as "kind", "type", "make", "imitation",

or the like.

The Model Law reserves, subject to certain exceptions, the right to use, in the course of trade, a protected appellation of origin to producers carrying out their activities in the geographical area specified in the registration with respect to the products specified in the registration, provided that such products possess the essential characteristic qualities specified in the registration. In addition, under the Model Law, it is unlawful for any person other than the specified producers to use, in the course of trade, a registered appellation of origin, or a similar name, with respect to the products specified in the registration or similar products, even if the true origin of the products is indicated or if the appellation is in the form of a translation or is accompanied by a term such as "kind", "type", "make", "imitation", or the like.

The Model Law provides that the direct or indirect use of an indication of source which is false or which is likely to mislead the public is unlawful.

(ii) Current WIPO activities

See item 1(ii), above.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

The countries which protect appellations of origin (see item 1(iii), above) provide for a protection of such appellations regardless of the possibility of confusion, against any unauthorized use of an appellation of origin. This means that, even if the public is not misled by the use of the appellation of origin (for example, by adding information on the true origin of the product), the use of the appellation of origin by persons who are not entitled to such use is unlawful.

The protection of indications of source depends in all countries on the possibility of a deception of the public about the geographical origin of the products in question. This means that, where an indication is used in a manner that might mislead the public with respect to the true origin of the product, such use is prohibited.

5. Duration of right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Paris Convention, the Madrid Agreement (Indications of Source) and the Model Law, the protection of geographical indications is not limited in time.

The Lisbon Agreement provides that an internationally registered appellation of origin cannot be deemed to have become generic in a member State as long as it is protected as an appellation of origin in the country of origin, and that it is protected, without renewal, for the whole of that period.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use

of such provisions and practices

As regards appellations of origin, in most countries where their protection is regulated by express provisions, the protection is not limited in time as long as the appellation complies with the requirements of the applicable provisions. In Algeria, the registration of an appellation of origin is valid for ten years and is renewable indefinitely for like periods if it still complies with the requirements of the applicable provisions.

6. Duration/cost of procedures for maintaining the right

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

There is no procedure for maintaining the right.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

There is generally no procedure for maintaining the right (see, however, item 5(iii), second sentence, above).

7. Compulsory licensing

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

None of the existing international treaties nor the Model Law permits or provides for compulsory licences in respect of geographical indications.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

No national law provides for compulsory licences in respect of geographical indications.

8. Procedures available for enforcement of rights and remedies/sanctions in cases of infringement

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

The Paris Convention obliges each of its ninety-eight member States to grant to nationals and residents

of the other member States, under the national treatment principle, the same legal remedies in respect of the protection of geographical indications as those it grants to its own nationals.

The Paris Convention further provides that all goods in connection with which a false indication of their source is directly or indirectly used, must be seized on importation into a member State of the Paris Union where the indication is entitled to legal protection. Seizure is likewise to be effected in the member State where the unlawful affixation occurred or in the member State into which the products were imported. If the legislation of a member State does not permit seizure on importation, seizure is to be replaced by prohibition of importation or by seizure inside the country. If the legislation of a member State permits neither seizure on importation nor prohibition of importation, nor seizure inside the country, then, until such time as the legislation is modified accordingly, those measures are to be replaced by the actions and remedies available in such cases to nationals under the law of such a member State.

Under the Paris Convention, seizure takes place at the request of the public prosecutor, or any other competent authority, or any interested party, whether a natural person or a legal entity, in conformity with the domestic legislation of each country; however, any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in the goods referred to above and established either in the locality falsely indicated as the source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, is in any case deemed an interested party. Two member States are not bound by the words "or in the country where the false indication of source is used" because those words are contained in Acts subsequent to 1925 by which the said States are not bound.

The Madrid Agreement (Indications of Source) obliges its thirty-two member States to provide for seizure upon importation of the goods involved in the cases referred to under item 1(i), above. Seizure is also to be effected in the country where the false (or deceptive, see item 1(i), above) indication of source has been applied, or into which the goods bearing the false (or deceptive) indication have already been imported. If the laws of a member State do not permit seizure upon importation, such seizure is to be replaced by prohibition of importation. If the laws of one of the twenty-nine member States bound by Acts subsequent to 1925 permit neither seizure upon importation nor prohibition of importation nor seizure within the country, then, until such time as the laws of such country are modified accordingly, those measures are to be replaced by the actions and remedies available in such cases to nationals under the laws of such State, whereas if the laws of one of the three member States not bound by Acts subsequent to 1925 do not permit seizure within the country, such seizure is to be replaced by the actions and remedies available in such cases to nationals under the laws of such State. In the absence of any special sanctions ensuring the repression of false (or deceptive) indications of source, the sanctions provided by the corresponding provisions of the laws relating to marks or trade names are applicable.

Under the Madrid Agreement (Indications of Source), seizure takes place at the instance of the customs authorities, which must immediately inform the interested party, whether an individual person or a legal entity, in order that such party may, if he so desires, take appropriate steps in connection with the seizure effected as a conservatory measure. However, the public prosecutor or any other competent authority may demand seizure either at the request of the injured party or ex officio; the procedure will then follow its normal course. The authorities are not bound to effect seizure in the case of transit.

Under the Lisbon Agreement, legal action required for ensuring the protection of appellations of origin may be taken in each of the sixteen member States under the provisions of the national legislation either at the instance of the competent Office or at the request of the public prosecutor, or by any interested party, whether a natural person or a legal entity, whether public or private.

The Model Law provides that any interested person and any interested group of producers or consumers

may bring proceedings to obtain from the courts the issuance of an injunction to prohibit the unlawful use of a protected appellation of origin or of an indication of source, where such use is actually being carried on or is imminent, and an order to destroy the labels and other documents which have contributed or are likely to contribute to such unlawful use, against persons making such unlawful use and persons who are parties to such use. Moreover, any person who has suffered damage as a result of such unlawful use is entitled to compensation from the person making such unlawful use and persons who are parties to such use. Furthermore, the Model Law provides for criminal sanctions (fine or imprisonment or both) in case of intentional unlawful use of a protected appellation of origin or of an indication of source.

(ii) Current WIPO activities

See item 1(ii), above.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

Countries having established a system of protection of appellations of origin generally provide for the following sanctions in respect of an unlawful use of an appellation of origin: civil sanctions, namely prohibition of continuation of actual use or imminent use (injunction), compensation of damages, publication of judgements and confiscation; criminal sanctions, namely fine and/or imprisonment; and administrative sanctions, namely seizure upon importation by customs authorities, seizure inside the country, in particular in order to secure evidence, and destruction of goods unlawfully bearing appellations of origin.

Unlawful use of indications of source is generally subject to the same kinds of sanctions.

9. International dispute settlement mechanisms

(i) Existing standards and norms provided in international treaties and/or in international guidelines, and the extent of acceptance of such treaties

Under the Paris Convention, which, in this respect, binds seventy-two States, the International Court of Justice is competent to decide on any dispute between two or more member States concerning the interpretation or application of the Convention, unless such dispute is settled by negotiations or otherwise. The other twenty-six States party to the Paris Convention are not bound by the provisions establishing the jurisdiction of the International Court of Justice.

(ii) Current WIPO activities

None.

(iii) Commonly applied national provisions and practices, including wherever possible an indication for representative samples of countries of the distribution of use of such provisions and practices

To the extent that "international dispute settlement mechanisms" refer to disputes between States on the implementation of their treaty obligations, there are no commonly applied national provisions and practices.

ANNEX I

States Party to the Hague Agreement
(as of 1 June 1988)

Belgium
Benin
Egypt
France
German Democratic Republic
Germany, Federal Republic of
Holy See
Hungary
Indonesia
Italy
Liechtenstein
Luxembourg
Monaco
Morocco
Netherlands
Senegal
Spain
Suriname
Switzerland
Tunisia
Viet Nam

Total: 21

ANNEX II

States Party to the Madrid Agreement
(Indications of Source)
(as of 1 June 1988)

Algeria
Brazil
Bulgaria
Cuba

Czechoslovakia
Dominican Republic
Egypt
France
German Democratic Republic
Germany, Federal Republic of
Hungary
Ireland
Israel
Italy
Japan
Lebanon
Liechtenstein
Monaco
Morocco
New Zealand
Poland
Portugal
San Marino
Spain
Sri Lanka
Sweden
Switzerland
Syria
Tunisia
Turkey
United Kingdom
Viet Nam

Total: 32

ANNEX III

States Party to the Lisbon Agreement
(as of 1 June 1988)

Algeria
Bulgaria
Burkina Faso
Congo
Cuba
Czechoslovakia
France
Gabon
Haiti

Hungary
Israel
Italy
Mexico
Portugal
Togo
Tunisia

Total: 16