

Annex 6

**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/423/ICANN/40

**GULF COOPERATION COUNCIL
(SAUDI ARABIA)**

vs/

**ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE TIC. TLD. STI.
(TURKEY)**

This document is a copy of original of the of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.

CASE No. EXP/423/ICANN/40

GULF COOPERATION COUNCIL (SAUDI ARABIA)

vs/

ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE TIC. TLD. STI. (TURKEY)

Expert Determination by

Judge Stephen M. Schwebel

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EXPERT DETERMINATION

1. An Application for the registration of a Generic Top- Level Domain Name (“gTLD”), namely, “.Persiangulf”, was generated on 8 July 2012 by the Applicant, ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE. TIC. LTD. STI. (Turkey). Its address is
Contact Information Redacted

The Applicant is represented by Mr. Mike Rodenbaugh, Rodenbaugh Law, Contact Information Redacted
2. A Community Objection was filed to the registration of “.Persiangulf” on 13 March 2013. The Objector is the GULF COOPERATION COUNCIL. Its address is Gulf
Contact Information Redacted

The Objector is represented by Mr. Badr El-Dein Abdel Khalek, Talal Abu Ghazaleh Organization, Contact Information Redacted
3. The Response of the Applicant to the Community Objection was filed on 15 May 2013. The language of all submissions and proceedings is English, in accordance with Article 5(a) of the Procedure.
4. All communications by the parties, the Expert Panel and the International Centre for Expertise of the International Chamber of Commerce (“Centre”) were transmitted electronically in accordance with Article 6(a) of the Procedure.

5. The Expert Panel, Stephen M. Schwebel ^{Contact Information Redacted} was appointed on 12 June 2013 by the Chairman of the Standing Committee of the Centre. In making his determination, the Expert, the sole member of the Panel, acted in accordance with the Rules for Expertise of the ICC, supplemented by the ICC Practice Note on the Administration of Cases under the Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure (the "Procedure").
6. The file was transmitted by the Centre to the Expert Panel on 12 August 2013, which accordingly is the date of the Expert Panel's final constitution. On 21 August 2013, the Expert informed the Parties by e-mail of his receipt of the file, and that additional submissions were not requested and a hearing was not contemplated. The Parties did not file further submissions or request to do so and did not request a hearing. The Expert rendered the Panel's determination to the Centre for its scrutiny within the 45-day time limit of the transmission of the file.

Summary of the Objection

7. The Community Objection is made by the Cooperation Council for the Arab States of the Gulf, known as the Gulf Cooperation Council (GCC). The Objection recalls that the GCC is an intergovernmental organization, established by treaty duly registered with the Secretariat of the United Nations, composed of six Arab States bordering the Gulf, namely, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates. Its mission is to effect coordination and integration among its Member States in all fields.
8. The GCC, the Objector in these proceedings, observes that the Applicant in these proceedings has applied for the gTLD ".Persiangulf", referring to the body of water which separates the Arabian Peninsula and the territory of Iran. The Objector recalls that, while surrounding Arab States maintain that that body of water should bear the name "Arabian Gulf", Iran "stands for the denomination 'Persian Gulf'". The GCC, as an established institution of the Arabian Gulf community which objects to the applied-for gTLD, maintains that, "ICANN should not authorize the launch of this gTLD and therefore interfere in a sensitive case."
9. The Objector acknowledges that, for a Community Objection to be upheld, there must be "a substantial opposition to the gTLD application from a representative portion of the community to which the gTLD string may be explicitly or implicitly targeted". The Objector notes that the Application for ".Persiangulf" has given rise to numerous negative comments on ICANN's webpage. The Governments of Bahrain, Oman, Qatar and the United Arab Emirates issued an "early warning" expressing serious concern, observing that the gTLD is "problematic and refers to a geographical place with a disputed name" and maintaining that there is a lack of community involvement and support among the eight littoral States for a consensual name, whether "Arabian Gulf" or "Persian Gulf". The Objector recalls that there is a longstanding dispute over the

- question among these littoral States, namely, Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. “They cannot reach a consensus on a unique name for the designated body of water and use alternatively the name of ‘Arabian Gulf’ or ‘Persian Gulf’”. The Objector contends that ICANN should not “bring this dispute into the cyber world and by doing so give credence to one side over the other”. The Objection reproduces a map of the 16th Century that denominates the Gulf as the “Arabian Gulf” as well as a contemporary map of Google that leaves that body of water unnamed in deference to objections that have been raised against one name or another. The Objector notes that the Gulf has borne various names over the centuries.
10. The Objector observes that the notion of “community” is broad and not precisely defined by ICANN’s Guidebook for the new gTLD program. The Objector views the Arab States of the Gulf as a clearly delineated community. “A substantial portion of the Arabian Peninsula Community is opposing the string ‘.Persiangulf.’” The opposition of the GCC States demonstrates “that there is an obvious and substantial opposition from a significant portion of the community”.
 11. The Objector notes that the Application states that, “A robust gTLD has the power to bring together people across national borders in a free-flowing exchange of information and commerce....The PERSIANGULF gTLD is the perfect way to easily and simply tie together these peoples of various nations, connected geographically and historically to the Persian Gulf.” The Objector continues: “This clearly shows that the applicant is targeting a confined community which consist of people and organizations bordering the gulf basically covering the 8 countries namely Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. Thus, if the applied for gTLD string does not intend to explicitly target opponents to the ‘Persian Gulf’ denomination, at least an implicit link can be easily identified. Hence, a strong association between the applied - for gTLD string ‘.Persiangulf’ and the community represented by the Objector (i.e. GCC) exists.”
 12. The Objector further contends that the existence of such a sensitive gTLD without the endorsement of the Arabian Gulf community will allow the Applicant to interfere with the core activities of the community, and that there is a likelihood of material detriment to the targeted community resulting from the Applicant’s operation of “.Persiangulf”. Use of that term online “is likely to increase the possibility of social unrest in the Arabian gulf region” and hence the level of dispute around the naming of this area.
 13. The Objector concludes that, since there is no consensus on the name of the gulf, and because “the majority of the targeted community recognizes the name “Arabian Gulf” as opposed to “Persian Gulf”, the limited interest of the targeted community in the proposed name will affect its sustainability”.
 14. The remedy requested is the withdrawal of the Application.

Summary of the Response

Standing

15. The Applicant initially contends that the Objector, the GCC, lacks standing to object. It observes that Section 3.2.2. of the Applicant Guidebook provides the following requirement for standing to assert a Community Objection: “Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection.” The Applicant maintains that the GCC however “fails to provide any evidence that the name of the body of water is a ‘sensitive case’ or has anything to do with the GCC’s mission.” The GCC “has no strong association to the TLD string .PersianGulf, and therefore lacks standing in the matter.”
16. The Applicant observes that many of the Arab States of the GCC consider the body of water at issue to be called the Arabian Gulf. “And so those states and/or the GCC itself are free to apply to operate the TLD .ArabianGulf if they so choose. But they offer not the faintest shred of proof to show the required ‘strong connection’ between the GCC and the TLD string .PersianGulf”. They rather disavow that name in favor of another. Therefore, the Applicant maintains, the GCC as the Objector clearly lacks standing to assert a Community Objection to the .Persian Gulf TLD Application.

Applicant’s Community Support

17. The Applicant further contends that it has “garnered overwhelming community support”—“more than 48,000 individual expressions of support via an online petition.... for .PARS and .PersianGulf submitted to ICANN....” in addition to the support of the Islamic Republic of Iran.

The GCC Lacks Proper Grounds for Objection

18. The Applicant moreover maintains that the Objector fails to meet the four tests prescribed by the Applicant Guidebook, Section. 3.5.4 of Module 3.
19. First, it must show that the community invoked by the Objector is a clearly delineated community. But, the Applicant contends, the Objector provides no evidence of the existence of the purported “Arabian Peninsula Community.” It appears to be “an imagined ad hoc community devised solely in response to Applicant’s application.” Its existence is hardly sustained by a Google search. Nor are geographical boundaries on one side of the Gulf supportive of the existence of a clearly delineated community. Even if it were accepted that the GCC represents its six member States as the Arabian Peninsula Community, and that their populations support the GCC position that .PersianGulf should not exist as a TLD string, their populations would total 39.4 million.

On the other side of the Gulf lies Iran, with more than 75 million people. The Applicant maintains that the Government of the Islamic Republic of Iran supports the .PersianGulfApplication. It observes that Iranians ubiquitously refer to the Persian Gulf. It recalls that United Nations documents mandate reference to the Persian Gulf. It notes that there are hundreds (if not thousands or millions) of maps that refer to the Persian Gulf, as do almost all maps printed before 1960. Calling the body of water between the Arabian Peninsula and Persia as the “Persian Gulf” has been predominant and pervasive for some 2500 years. “The ‘Arabian Peninsula Community’ did not exist prior to this Objection, and shows no association with the .PersianGulf TLD string.”

20. “Therefore, it is not clearly delineated within the meaning of the Guidebook, and the Objection must fail.”
21. Second, the Applicant argues, there is no substantial, proven community opposition to the Application. Reference to “numerous comments”, and to “early warnings” from four GCC Member States, do not suffice. The purported “Arabian Peninsula Community” represented by the GCC disavows the Persian Gulf name and has no association with that name. So its opposition cannot be considered substantial.
22. Third, in respect of “targeting”, the Applicant contends that the Objector must prove a strong association between the applied-for TLD string and the community represented by the Objector. The Objector cites the fact that the Applicant intends to promote the .PersianGulf domain names to persons in the Persian Gulf region. But the Applicant responds that it would not plan to sell the .PersianGulf domain names to persons in the region “who disavow the very name”. Such persons, apparently represented by the GCC, “are not likely to be interested in .PersianGulf domain names whatsoever, nor to be harmed by their existence. Therefore they cannot claim any association with that TLD string.”
23. The Objector accepts that the Applicant does not intend explicitly to target opponents of the Persian Gulf denomination. But it claims that “an implicit link can easily be identified.” It fails however to identify that link or provide evidence of its significance. “Any such link would be a link of non-association, or disavowment of the denomination ‘Persian Gulf’ – and thus is the polar opposite of the ‘strong association’ ” that the Objector is required to prove.
24. Fourth, in respect of detriment, the Applicant maintains that the Objector must prove that acceptance of the Application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. But, argues the Applicant, the Objector hardly addresses, still less evidences, the several detrimental factors set out in the Guidebook. It says no more than that allowing “the existence of such a sensitive string without the endorsement of the Arabian Gulf community which is linked to this area will allow the applicant to interfere with the core activities of the community that would result from the applicant’s operation of the applied-for gTLD string. Hence, there is likelihood of

material detriment.” The Applicant states that ICANN’s Independent Objector, Dr. Alain Pellet, thoroughly reviewed the purported public opposition to the .PersianGulf TLD, and found no basis for any “Public Interest” or “Community Objection”. The Applicant in its Application affirmed its public interest commitment in detail and has entered into organizational arrangements that will give effect to that commitment. It contends that, “Such documented efforts must outweigh GCC’s rank speculation that the TLD will somehow in some unspecified manner affect regional residents’ ‘core activities’. All regional ccTLDs are still available for their use. Perhaps soon the GCC or another entity will apply for the .ArabianGulf TLD and it can be provided to residents as well.” The Objector argues that the existence of political disputes over the name of the Gulf somehow proves that “concrete damages” are likely to occur to the Objector’s community, but offers no proof to sustain this speculation. The Objector has offered no evidence of a dispute over the name. People have called the Gulf by different names “for many centuries if not millennia”. But there is no evidence “as to how such purported dispute has ever caused or contributed to any social unrest in the region or elsewhere.” The Objector “has wholly failed to prove any likelihood of any detriment to anyone, and thus its Objection must fail.”

25. Attached to the Response of the Applicant are extensive annexes, including an archive of maps denominating the Gulf as the “Persian Gulf”.

The Determination of the Expert

26. The first question to be decided is, does the Objector have standing, pursuant to Article 8(a)(ii) of the Procedure, and to Module 3 of the Guidebook, Articles 3.2.2 and 3.2.2.4, to object?
27. The Applicant maintains that the Objector characterizes itself as the “Arabian Peninsula Community”. That Community, says the Applicant, is an imaginary construct which lacks standing to object to the Application because it is not part of the Persian Gulf community. According to the Applicant, it is, on the contrary, the polar opposite because it disavows the very name of that community, a community which is directed only to those of Iranian heritage and interests.
28. This position of the Applicant however is not wholly consistent with the terms of its Application. The Application’s description of the mission and purpose of “.PersianGulf” emphasizes the ethnicity of more than one hundred million Persians worldwide and their common cultural, linguistic and historical heritage. However, it also states that: “While the .PERSIANGULF TLD ties back historically and culturally to the Middle Eastern people, it also has the potential to tie together the great number of people across the globe that may have any ties to or business in the region....A robust gTLD has the power to bring together people across national borders in a free-flowing exchange of information and commerce....The proposed TLD is, quite obviously, the name of the Persian Gulf, a region in which many people live, and from which many benefit by way of resources.

- The total population of the countries in the Persian Gulf region exceeds 120 million people – and all of them have a sense of belonging to the Persian Gulf. The .PERSIANGULF gTLD is the perfect way to easily and simply tie together these peoples of various nations, connected geographically and historically to the Persian Gulf.”
29. In the view of the Expert, it is incontestable that among the “peoples of various nations connected geographically and historically to the Persian Gulf” are the Arab inhabitants of the west side of the Gulf. It is undeniable that among “these peoples of various nations, connected geographically and historically to the Persian Gulf”, who have “a sense of belonging to the Persian Gulf” and are to be “tied together” by .PERSIANGULF gTLD, are Arabs inhabitants of the region. Many of those Arabs are inhabitants of the six States of the western littoral of the Gulf that have joined together to constitute the Gulf Cooperation Council. Through and by the agency of the Gulf Cooperation Council, an established intergovernmental organization internationally representing those inhabitants, which is the Objector in these proceedings, they have standing to challenge the registration of .PERSIANGULF gTLD. The Gulf Cooperation Council is an established, defined institution, constituted by treaty registered with the United Nations (“UN”). Founded in 1981, its existence and operations pre-date by decades the instant challenge that it has made; the GCC has not been formed for the purpose of raising its challenge. Its observer status at the United Nations imports global recognition of the GCC. It enjoys international legal personality. It has permanent headquarters in Riyadh, Saudi Arabia, and a range of activities designed to promote the co-ordination and integration of its Member States and to strengthen relations among their peoples, including their communications, education and culture. The GCC’s institutional purposes thus are to promote the co-operative benefit of the inhabitants of “the associated community”, namely the population of the GCC States. The Gulf Cooperation Council accordingly meets the criteria for standing to maintain a challenge set out in the Guidebook, Module 3, Articles 3.2.2 and 3.2.2.4.
30. The second question to be decided is, is there substantial community opposition to the Application?
31. Accepting that the community in question, pursuant to the foregoing interpretation of the Application set out in paragraphs 28 and 29 above, includes the Arab inhabitants of the Gulf who make up the population of the six States of its western littoral that compose the Gulf Cooperation Council, it is plain that there is substantial opposition of these Arab inhabitants of the Persian Gulf community and of the GCC which represents them internationally to the registration of .PERSIAN GULF gTLD. That opposition is reflected in the Summary of the Objection, paragraphs 7 to 14 above. Moreover, there has been vocal, reiterated challenge by Arab States and sources to the Persian Gulf denomination for more than fifty years. That challenge has been reflected in United Nations documentation. For example, an Editorial Directive of 10 January 1990 (ST.CS.SER.A/29) states, in the customary muted diplomatic parlance of United Nations

- Secretariat documents, that: "The term 'Persian Gulf' is used in documents, publications and statements emanating from the Secretariat as the standard geographical designation for the body of water lying between the Arabian Peninsula and the Islamic Republic of Iran, thus following longstanding conventional practice... However, in documents, publications and statements emanating from a Member Government or intergovernmental organization, the terminology of the original should be retained."
32. It is true that Arab Governments and sources, including the Objector in these proceedings, disavow the propriety of calling the Gulf the "Persian Gulf". But it does not follow that that disavowal imports that they are not part of the Persian Gulf community. The Persian Gulf is a geographical expression. It refers to a body of water separating the Arabian Peninsula from the landmass of Iran. The people who live round the littoral of that body of water may reasonably be viewed as a community, even though it is a community that is characterized by ethnic, historical, religious and political differences. Moreover, the opposition of Arab States and populations to denominating the Gulf as the Persian Gulf is substantial, as is manifested by the fact, of which the Expert takes judicial notice, that Arab States, individually and collectively, and Arab individuals and organizations, refer to the Gulf as the Arabian Gulf (as illustrated by the foregoing quotation from a UN document).
 33. The third question to be decided is, is the target of the proposed domain explicitly or implicitly the Arab community of the Gulf?
 34. The paramount objective of the proposed .PERSIANGULF gTLD is to provide an internet link among Iranians and persons of Iranian heritage, whether those persons live in or outside of Iran. However, as paragraphs 11, 28 and 29 above make clear, an objective of the domain is to tie together "peoples of various nations, connected geographically and historically to the Persian Gulf". It follows that .PERSIANGULF gTLD, if not explicitly targeted to affect the inhabitants of the GCC States, implicitly targets them.
 35. While the foregoing is a plausible conclusion, it is not necessarily an exclusive one. The language just quoted is open to the interpretation that not only the principal but sole objective of .PERSIANGULF gTLD is to establish an internet link among Iranians and persons of Iranian heritage whether they are nationals of Iran or of various other nations.
 36. If that is indeed the sole objective however, the question arises, why is not the domain named .PERSIANHERITAGE rather than .PERSIANGULF? If the objective is confined to persons of Persian origin, why choose a geographical name? Why choose the name of a body of water that indisputably is bound up with the heritage not only of persons of Persian derivation but of millions of Arabs as well?
 37. In view of these considerations, it is concluded that Arab inhabitants of the region would be implicitly targeted were .PERSIANGULF gTLD to be registered.
 38. The fourth question that must be decided is whether those who are found to be implicitly targeted suffer the likelihood of material detriment to their rights or legitimate interests.

In this regard, the Guidebook provides in respect of a Community Objection, at Article 3.5.4:

*“**Detriment** The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted....Factors that could be used by a panel in making this determination include but are not limited to:*

- *Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;*
- *Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely...*
- *Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;*
- *Dependence of the community represented by the objector on the DNS for its core activities;*
- *Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operations of the applied-for gTLD string; and*
- *Level of certainty that alleged detrimental outcomes would occur.*

If opposition by a community is determined, but there is no likelihood of material damage to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.”

39. The Objector maintains that “allowing the existence of such a sensitive string without the endorsement of the Arabian gulf community which is linked to this area will allow the applicant to interfere with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string. Hence, there is likelihood of material detriment....”
40. In the view of the Expert, the foregoing argument does not provide or constitute proof that the Application if granted will create a likelihood of material detriment to the community of the Objector. Nor is it easy to see what material detriment is likely to occur, which may explain why the Objection is so terse in this regard. In the perception of the Expert, the fact remains that the practical effect of registration of .PERSIANGULF gTLD is difficult to discern and weigh. Hence it follows that a likelihood of material detriment has not been established.
41. This is not to suggest that the dispute is not important to the States and interests concerned. Such denomination disputes can be of high importance, roiling international

relations. One such dispute recently was the subject of a contentious case in the International Court of Justice. Other current such disputes concern, among other issues, the conflicting denomination of islands or of a sea between two countries.

42. The dispute between Arab States and supporters, on the one hand, and the Islamic Republic of Iran and its supporters, on other hand, over the denomination of the Gulf, has subsisted for more than fifty years. It is far from clear that registration of .PERSIANGULF gTLD would resolve, or exacerbate, or significantly affect, that dispute. In any event, the GCC and other Arab interests are and would remain free to seek registration of a domain such as .ARABIANGULF gTLD.
43. It follows that the Objection fails for lack of evidence of the likelihood of material detriment to which registration of the Application would give rise.

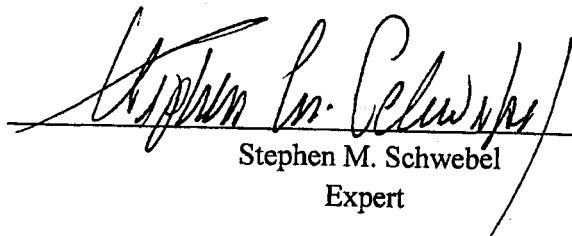
Decision:

In view of the above analysis and reasons, I hereby render the following Expert Determination according to Article 21(d) of the Procedure:

1. GULF COOPERATION COUNCIL's Objection is dismissed;
2. Applicant ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE. TIC. LTD. STI prevails;
3. ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE. TIC. LTD. STI's advance payment on costs shall be refunded by the Centre to ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE. TIC. LTD. STI.

Date: 30 October 2013

Signature:


Stephen M. Schwebel
Expert

Annex 7

GAC Early Warning – Submittal Persiangulf-AE-55439

Application ID:	1-2128-55439
Entity/Applicant Name:	Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.
String:	PERSIANGULF
Early Warning Issue Date:	20 November 2012

Early Warning Description – This will be posted publicly:

The governments of Bahrain, Oman, Qatar and UAE would like to express its serious concerns toward “.persiangulf” new gTLD application made by Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. specifically in two areas as highlighted below:

- (1) The applied for new gTLD is problematic and refers to a geographical place with disputed name.**
- (2) Lack of community involvement and support**

Reason/Rationale for the Warning – This will be posted publicly:

- (1) The applied for new gTLD is problematic and refers to a geographical place with disputed name.**

The applied for new gTLD string “the Persian Gulf” refers to the body of water separating the Arabian Peninsula from the Iranian plateau (The Arabian Gulf). Throughout the history, this body of water has been known by different names including among others Arabian Gulf, Basreh Gulf, Ghatif Gulf, Bahrain Gulf. The most dominant names that are currently used for this body of water are Arabian Gulf and Persian Gulf.

The naming of the Arabian Gulf has been controversial and debatable subject in various national and international venues and levels. Many countries, intergovernmental organizations, publications, literatures, media, maps and organizations recognize the name Arabian Gulf. The Arab countries bordering the Arabian Gulf including the UAE only recognize the name “Arabian Gulf”.

There have been several attempts also by different organization to resolve this issue by either referring to both names of the gulf, or some by referring to a new neutral name like “the Gulf” or by removing the reference to the gulf altogether. For example in 2004 the National Geographic Society in its Atlas mentioned both Persian Gulf and Arabian Gulf. Google used to have both names in their product “Google Maps” however in 2012, Google have removed reference to both names.

This letter does not intend to bring up the debates and arguments around naming the gulf here. However it is important to note that there is no general consensus on a single unified name for the Arabian Gulf. It

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is also important to note that the United Nations Expert Group on Geographical Names issued a resolution no III/20 “Names of features beyond a single sovereignty” which basically recommends having single name of a territory beyond single sovereignty. Here is an excerpt from the resolution:

“The Conference, Considering the need for international standardization of names of geographical features that are under the sovereignty of more than one country or are divided among two or more countries,

1. *Recommends that countries sharing a given geographical feature under different names should endeavour, as far as possible, to reach agreement on fixing a single name for the feature concerned;*

2. *Further recommends that when countries sharing a given geographical feature do not succeed in agreeing on a common name, it should be a general rule of international cartography that the name used by each of the countries concerned will be accepted. A policy of accepting only one or some of such names while excluding the rest would be inconsistent in principle as well as inexpedient in practice...”*

Noting point 2 in resolution III/20, it would be unfair and unacceptable to approve the application of .persiangulf considering there is no equivalent application for the name .arabiangulf while the name “Arabian Gulf” is widely used and accepted.

Therefore the string “.persiangulf” **should not be allowed to be registered** as a gTLD unless there is consensus on a single name recognized by all countries bordering the Arabian Gulf.

(2) Lack of community involvement and support

Furthermore, the applicant mentions the following in response to Q18(a):

“The Persian Gulf is located in the southwest of the Asian Continent at 23 to 30 degrees northern latitude and 48 to 56 degrees longitude it is still well-known across the world, as is its location.

...

A robust gTLD has the power to bring together people across national borders in a free-flowing exchange of information and commerce

...

The proposed TLD is, quite obviously, the name of the Persian Gulf, a region in which many people live, and from which many benefit by way of resources... The .PERSIANGULF gTLD is the perfect way to easily and simply tie together these peoples of various nations, connected geographically and historically to the Persian Gulf.

”

This clearly shows that the applicant is targeting a confined community which is people and organizations bordering the gulf which basically covers the 8 countries namely Bahrain, Iran, Iraq, Kuwait,

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Oman, Qatar, Saudi Arabia and United Arab Emirates.

To the best of our knowledge the applicant did not consult with the majority of the targeted community in regards to launch of the proposed TLD, its strategy and policies.

The applicant did not receive any endorsement or support from the community or any of its organizations, or any governmental or non-governmental organization within this community.

Given that there is no consensus on the name of the gulf and considering that majority of the targeted community recognize the name "Arabian Gulf" as oppose to the name "Persian Gulf" it would limit the interest of the targeted community to the proposed name space. This will also impact the sustainability and growth of the name space.

For the above reasons, the governments of Bahrain, Oman, Qatar and UAE would like to **raise its disapproval and non-endorsement** to this application and request the ICANN and the new gTLD program evaluators to not approve this application.

Possible Remediation steps for Applicant – This will be posted publicly:

The applicant should withdraw their application based on the information provided above

Further Notes from GAC Member(s) (Optional) – This will be posted publicly:

INFORMATION FOR APPLICANTS

About GAC Early Warning

The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs or of a formal objection at a later stage in the process. Refer to section 1.1.2.4 of the Applicant Guidebook (<http://newgtlds.icann.org/en/applicants/agb>) for more information on GAC Early Warning.

Instructions if you receive the Early Warning

ICANN strongly encourages you work with relevant parties as soon as possible to address the concerns voiced in the GAC Early Warning.

Asking questions about your GAC Early Warning

If you have questions or need clarification about your GAC Early Warning, please contact gacearlywarning@gac.icann.org. As highlighted above, ICANN strongly encourages you to contact gacearlywarning@gac.icann.org as soon as practicable regarding the issues identified in the Early Warning.

Continuing with your application

If you choose to continue with the application, then the “Applicant’s Response” section below should be completed. In this section, you should notify the GAC of intended actions, including the expected completion date. This completed form should then be sent to gacearlywarning@gac.icann.org. If your remediation steps involve submitting requests for changes to your application, see the change request process at <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>.

In the absence of a response, ICANN will continue to process the application as submitted.

Withdrawing your application

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If you choose to withdraw your application within the 21-day window to be eligible for a refund of 80% of the evaluation fee (USD 148,000), please follow the withdrawal process published at <http://newgtlds.icann.org/en/applicants/customer-service/withdrawal-refund>. Note that an application can still be withdrawn after the 21-day time period; however, the available refund amount is reduced. See section 1.5 of the Applicant Guidebook.

For questions please contact: gacearlywarning@gac.icann.org

Applicant Response:

Annex 8



Governmental Advisory Committee

Beijing, People's Republic of China – 11 April 2013

GAC Communiqué – Beijing, People's Republic of China¹

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Beijing during the week of 4 April 2013. Sixty-one (61) GAC Members participated in the meetings and eight (8) Observers. The GAC expresses warm thanks to the local hosts China Internet Network Information Center (CNNIC), China Organizational Name Administration Center (CONAC), and Internet Society of China for their support.

II. Internal Matters

1. New Members and Observers

The GAC welcomes Belarus, Cape Verde, Côte d'Ivoire, Lebanon, and the Republic of the Marshall Islands to the Committee as members, and The World Meteorological Organisation as an Observer.

2. GAC Secretariat

Following a request for proposals, the GAC received presentations from two organizations and agreed that one such candidate should be providing secretariat services to the GAC, with the aim of becoming operational as soon as possible. Negotiations with such organization will start immediately after the Beijing meeting.

¹ To access previous GAC advice, whether on the same or other topics, past GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings> and older GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Meetings+Archive>.

3. GAC Leadership

The GAC warmly thanks the outgoing Vice-Chairs, Kenya, Singapore, and Sweden and welcomes the incoming Vice-Chairs, Australia, Switzerland and Trinidad & Tobago.

III. Inter-constituencies Activities

1. Meeting with the Accountability and Transparency Review Team 2 (ATRT 2)

The GAC met with the ATRT 2 and received an update on the current activities of the ATRT 2. The exchange served as an information gathering session for the ATRT 2 in order to hear GAC member views on the Review Team processes and areas of interest for governments. The GAC provided input on governmental processes and the challenges and successes that arose during the first round of reviews, and implementation of the GAC related recommendations of the first Accountability and Transparency Review Team.

2. Board/GAC Recommendation Implementation Working Group (BGRI-WG)

The Board–GAC Recommendation Implementation Working Group (BGRI–WG) met to discuss further developments on ATRT1 recommendations relating to the GAC, namely recommendations 11 and 12. In the context of Recommendation 11, the GAC and the Board have concluded the discussion and agreed on the details of the consultation process mandated per ICANN Bylaws, should the Board decide not to follow a GAC advice. With respect to Recommendation 12, on GAC Early Engagement, the BGRI-WG had a good exchange with the GNSO on mechanisms for the GAC to be early informed and provide early input to the GNSO PDP. The BGRI–WG intends to continue this discussion intersessionally and at its next meeting in Durban.

3. Brand Registry Group

The GAC met with the Brand Registry Group and received information on its origins, values and missions.

4. Law Enforcement

The GAC met with law enforcement representatives and received an update from Europol on the Registrar Accreditation Agreement (RAA).

The GAC warmly thanks the Accountability and Transparency Review Team 2, the Brand Registry Group, Law Enforcement, and the ICANN Board who jointly met with the GAC as well

as all those among the ICANN community who have contributed to the dialogue with the GAC in Beijing.

IV. GAC Advice to the ICANN Board²

1. New gTLDs

a. GAC Objections to Specific Applications

i. The GAC Advises the ICANN Board that:

i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:³

1. The application for .africa (Application number 1-1165-42560)
2. The application for .gcc (application number: 1-1936-2101)

ii. With regard to Module 3.1 part II of the Applicant Guidebook⁴:

1. The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.

b. Safeguard Advice for New gTLDs

To reinforce existing processes for raising and addressing concerns the GAC is providing safeguard advice to apply to broad categories of strings (see Annex I).

c. Strings for Further GAC Consideration

In addition to this safeguard advice, that GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban.

- i. Consequently, **the GAC advises the ICANN Board** to: not proceed beyond Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, .yun, .thai, .zulu, .wine, .vin

² To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings>

³ Module 3.1: "The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

⁴ Module 3.1: "The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

d. The GAC requests:

- i. a written briefing about the ability of an applicant to change the string applied for in order to address concerns raised by a GAC Member and to identify a mutually acceptable solution.

e. Community Support for Applications

The GAC advises the Board:

- i. that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.

f. Singular and plural versions of the same string as a TLD

The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion.

Therefore **the GAC advises the ICANN Board to:**

- i. Reconsider its decision to allow singular and plural versions of the same strings.

g. Protections for Intergovernmental Organisations

The GAC stresses that the IGOs perform an important global public mission with public funds, they are the creations of government under international law, and their names and acronyms warrant special protection in an expanded DNS. Such protection, which the GAC has previously advised, should be a priority.

This recognizes that IGOs are in an objectively different category to other rights holders, warranting special protection by ICANN in the DNS, while also preserving sufficient flexibility for workable implementation.

The GAC is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward.

Pending the resolution of these implementation issues, the **GAC reiterates its advice to the ICANN Board that:**

- i. appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch.

2. Registrar Accreditation Agreement (RAA)

Consistent with previous communications to the ICANN Board

a. the GAC advises the ICANN Board that:

- i. the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.

The GAC also strongly supports the amendment to the new gTLD registry agreement that would require new gTLD registry operators to use only those registrars that have signed the 2013 RAA.

The GAC appreciates the improvements to the RAA that incorporate the 2009 GAC-Law Enforcement Recommendations.

The GAC is also pleased with the progress on providing verification and improving accuracy of registrant data and supports continuing efforts to identify preventative mechanisms that help deter criminal or other illegal activity. Furthermore the GAC urges all stakeholders to accelerate the implementation of accreditation programs for privacy and proxy services for WHOIS.

3. WHOIS

The GAC urges the ICANN Board to:

- a. ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.

The GAC stands ready to respond to any questions with regard to the GAC Principles.

The GAC also expects its views to be incorporated into whatever subsequent policy development process might be initiated once the Expert Working Group concludes its efforts.

4. International Olympic Committee and Red Cross /Red Crescent

Consistent with its previous communications, **the GAC advises the ICANN Board to:**

- a. amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.

5. Public Interest Commitments Specifications

The GAC requests:

- b. more information on the Public Interest Commitments Specifications on the basis of the questions listed in annex II.

V. Next Meeting

The GAC will meet during the period of the 47th ICANN meeting in Durban, South Africa.

ANNEX I

Safeguards on New gTLDs

The GAC considers that Safeguards should apply to broad categories of strings. For clarity, this means any application for a relevant string in the current or future rounds, in all languages applied for.

The GAC advises the Board that all safeguards highlighted in this document as well as any other safeguard requested by the ICANN Board and/or implemented by the new gTLD registry and registrars should:

- be implemented in a manner that is fully respectful of human rights and fundamental freedoms as enshrined in international and, as appropriate, regional declarations, conventions, treaties and other legal instruments – including, but not limited to, the UN Universal Declaration of Human Rights.
- respect all substantive and procedural laws under the applicable jurisdictions.
- be operated in an open manner consistent with general principles of openness and non-discrimination.

Safeguards Applicable to all New gTLDs

The GAC Advises that the following six safeguards should apply to all new gTLDs and be subject to contractual oversight.

1. **WHOIS verification and checks** —Registry operators will conduct checks on a statistically significant basis to identify registrations in its gTLD with deliberately false, inaccurate or incomplete WHOIS data at least twice a year. Registry operators will weight the sample towards registrars with the highest percentages of deliberately false, inaccurate or incomplete records in the previous checks. Registry operators will notify the relevant registrar of any inaccurate or incomplete records identified during the checks, triggering the registrar’s obligation to solicit accurate and complete information from the registrant.
2. **Mitigating abusive activity**—Registry operators will ensure that terms of use for registrants include prohibitions against the distribution of malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.
3. **Security checks**— While respecting privacy and confidentiality, Registry operators will periodically conduct a technical analysis to assess whether domains in its gTLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. If Registry operator identifies security risks that pose an actual risk of harm, Registry operator will notify the relevant registrar and, if the registrar does not take immediate action, suspend the domain name until the matter is resolved.

4. **Documentation**—Registry operators will maintain statistical reports that provide the number of inaccurate WHOIS records or security threats identified and actions taken as a result of its periodic WHOIS and security checks. Registry operators will maintain these reports for the agreed contracted period and provide them to ICANN upon request in connection with contractual obligations.
5. **Making and Handling Complaints** – Registry operators will ensure that there is a mechanism for making complaints to the registry operator that the WHOIS information is inaccurate or that the domain name registration is being used to facilitate or promote malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.
6. **Consequences** – Consistent with applicable law and any related procedures, registry operators shall ensure that there are real and immediate consequences for the demonstrated provision of false WHOIS information and violations of the requirement that the domain name should not be used in breach of applicable law; these consequences should include suspension of the domain name.

The following safeguards are intended to apply to particular categories of new gTLDs as detailed below.

Category 1

Consumer Protection, Sensitive Strings, and Regulated Markets:

The GAC Advises the ICANN Board:

- Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm. The following safeguards should apply to strings that are related to these sectors:
 1. Registry operators will include in its acceptable use policy that registrants comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
 2. Registry operators will require registrars at the time of registration to notify registrants of this requirement.
 3. Registry operators will require that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law and recognized industry standards.
 4. Establish a working relationship with the relevant regulatory, or industry self-regulatory, bodies, including developing a strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.

5. Registrants must be required by the registry operators to notify to them a single point of contact which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

In the current round the GAC has identified the following non-exhaustive list of strings that the above safeguards should apply to:

- **Children:**
 - .kid, .kids, .kinder, .game, .games, .juegos, .play, .school, .schule, .toys
- **Environmental:**
 - .earth, .eco, .green, .bio, .organic
- **Health and Fitness:**
 - .care, .diet, .fit, .fitness, .health, .healthcare, .heart, .hiv, .hospital,, .med, .medical, .organic, .pharmacy, .rehab, .surgery, .clinic, .healthy (IDN Chinese equivalent), .dental, .dentist .doctor, .dds, .physio
- **Financial:**
 - capital, . cash, .cashbackbonus, .broker, .brokers, .claims, .exchange, .finance, .financial, .fianancialaid, .forex, .fund, .investments, .lease, .loan, .loans, .market, . markets, .money, .pay, .payu, .retirement, .save, .trading, .autoinsurance, .bank, .banque, .carinsurance, .credit, .creditcard, .creditunion,.insurance, .insure, ira, .lifeinsurance, .mortgage, .mutualfunds, .mutuelle, .netbank, .reit, .tax, .travelersinsurance, .vermogensberater, .vermogensberatung and .vesicherung.
- **Gambling:**
 - .bet, .bingo, .lotto, .poker, and .spreadbetting, .casino
- **Charity:**
 - .care, .gives, .giving, .charity (and IDN Chinese equivalent)
- **Education:**
 - degree, .mba, .university
- **Intellectual Property**
 - .audio, .book (and IDN equivalent), .broadway, .film, .game, .games, .juegos, .movie, .music, .software, .song, .tunes, .fashion (and IDN equivalent), .video, .app, .art, .author, .band, .beats, .cloud (and IDN equivalent), .data, .design, .digital, .download, .entertainment, .fan, .fans, .free, .gratis, .discount, .sale, .hiphop, .media, .news, .online, .pictures, .radio, .rip, .show, .theater, .theatre, .tour, .tours, .tvs, .video, .zip
- **Professional Services:**
 - .abogado, .accountant, .accountants, .architect, .associates, .attorney, .broker, .brokers, .cpa, .doctor, .dentist, .dds, .engineer, .lawyer, .legal, .realtor, .realty, .vet
- **Corporate Identifiers:**
 - .corp, .gmbh, .inc, .limited, .llc, .llp, .ltda, .ltd, .sarl, .srl, .sal
- **Generic Geographic Terms:**
 - .town, .city, .capital

- .reise, .reisen⁵
- .weather
- .engineering
- .law
- **Inherently Governmental Functions**
 - .army, .navy, .airforce
- In addition, applicants for the following strings should develop clear policies and processes to minimise the risk of cyber bullying/harassment
 - .fail, .gripe, .sucks, .wtf

The GAC further advises the Board:

1. In addition, some of the above strings may require further targeted safeguards, to address specific risks, and to bring registry policies in line with arrangements in place offline. In particular, a limited subset of the above strings are associated with market sectors which have clear and/or regulated entry requirements (such as: financial, gambling, professional services, environmental, health and fitness, corporate identifiers, and charity) in multiple jurisdictions, and the additional safeguards below should apply to some of the strings in those sectors:
 6. At the time of registration, the registry operator must verify and validate the registrants' authorisations, charters, licenses and/or other related credentials for participation in that sector.
 7. In case of doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents.
 8. The registry operator must conduct periodic post-registration checks to ensure registrants' validity and compliance with the above requirements in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

Category 2

Restricted Registration Policies

The GAC advises the ICANN Board:

1. **Restricted Access**
 - As an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1

⁵ Austria, Germany, and Switzerland support requirements for registry operators to develop registration policies that allow only travel-related entities to register domain names. Second Level Domains should have a connection to travel industries and/or its customers

above. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.

2. Exclusive Access

- For strings representing generic terms, exclusive registry access should serve a public interest goal.

- In the current round, the GAC has identified the following non-exhaustive list of strings that it considers to be generic terms, where the applicant is currently proposing to provide exclusive registry access
 - .antivirus, .app, .autoinsurance, .baby, .beauty, .blog, .book, .broker, .carinsurance, .cars, .cloud, .courses, .cpa, .cruise, .data, .dvr, .financialaid, .flowers, .food, .game, .grocery, .hair, .hotel, .hotels, .insurance, .jewelry, .mail, .makeup, .map, .mobile, .motorcycles, .movie, .music, .news, .phone, .salon, .search, .shop, .show, .skin, .song, .store, .tennis, .theater, .theatre, .tires, .tunes, .video, .watches, .weather, .yachts, .クラウド [cloud], .ストア [store], .セール [sale], .ファッション [fashion], .家電 [consumer electronics], .手表 [watches], .書籍 [book], .珠宝 [jewelry], .通販 [online shopping], .食品 [food]

ANNEX II

List of questions related to Public Interest Commitments Specifications

1. Could a third party intervene or object if it thinks that a public interest commitment is not being followed? Will governments be able to raise those sorts of concerns on behalf of their constituents?
2. If an applicant does submit a public interest commitment and it is accepted are they able to later amend it? And if so, is there a process for that?
3. What are ICANN's intentions with regard to maximizing awareness by registry operators of their commitments?
4. Will there be requirements on the operators to maximize the visibility of these commitments so that stakeholders, including governments, can quickly determine what commitments were made?
5. How can we follow up a situation where an operator has not made any commitments? What is the process for amending that situation?
6. Are the commitments enforceable, especially later changes? Are they then going into any contract compliance?
7. How will ICANN decide whether to follow the sanctions recommended by the PIC DRP? Will there be clear and transparent criteria? Based on other Dispute Resolution Procedures what is the expected fee level?
8. If serious damage has been a result of the past registration policy, will there be measures to remediate the harm?

Annex 9



Governmental Advisory Committee

Durban, 18 July 2013

GAC Communiqué – Durban, South Africa¹

i. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Durban, South Africa during the week of 13 July 2013. 59 GAC Members and 4 Observers attended the meetings. The GAC expresses warm thanks to the local host, .zadna, for their support.

ii. Inter-constituency Activities

1. Briefing from the Geo TLD Registry Group

The GAC met with the Geo TLD Registry Group and received information on the organization's origins, values, missions and current concerns.

2. Meeting with the Accountability and Transparency Review Team 2 (ATRT 2)

The GAC met with the ATRT 2 and discussed expectations and priorities. The GAC encouraged the ATRT2 to give advice on improving the accountability and transparency in ICANN's financial operations reporting. The ATRT2 was invited to advise on how to improve outreach and active participation, especially from developing countries. Broad participation of stakeholders from all regions is vital for the legitimacy of ICANN and the multi-stakeholder model. The GAC also invited the ATRT2 to give advice on how to improve the GAC and the transparency of GAC meetings, and to better explain and provide rationales for the advice of the GAC. The ATRT2 invited individual GAC members to provide further written inputs to the Review Team.

¹ To access previous GAC advice, whether on the same or other topics, past GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings> and older GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Meetings+Archive>.

3. Meeting with the Generic Names Supporting Organization (GNSO)

The GAC met with the GNSO and exchanged views on key policy development work in the GNSO, including an ongoing Policy Development Process (PDP) regarding protection of IGO and INGO names and acronyms. An exchange focused on the opportunities for the GAC to engage early in GNSO Policy Development Processes.

4. Meeting with the Security and Stability Advisory Committee (SSAC)

The GAC met with the SSAC and received an update on recent SSAC work regarding namespace collisions, internal name certificates and dotless domains, and exchanged views on ensuing concerns.

5. Meeting with the Country Code Names Supporting Organization (ccNSO)

The GAC met with the ccNSO and received information about the recently concluded policy development regarding IDN ccTLDs, the modification of the IDN Fast Track process with creation of a second panel and the Framework of Interpretation work. The GAC and the ccNSO also discussed how to further improve the future dialogue between the GAC and the ccNSO.

6. Meeting with the At-Large Advisory Committee (ALAC)

The GAC met with the ALAC and received an introduction to ALAC's organization, bottom-up processes and output, including formal ALAC objections to certain new gTLD applications. The ALAC voiced concerns regarding issues on dot-less domains and domain name collisions and expressed support for recent SSAC statements. The ALAC also expressed concerns over the high threshold in the dispute resolution procedure for Public Interest Commitments (PIC) in particular in relation to the measurable harm standard required to file a complaint and the enforcement of these.

7. Briefing from the Domain Name Association (DNA)

The GAC met with the Domain Name Association and received information on its structure and objectives.

8. Meeting with the Expert Working Group on gTLD Directory Services (EWG)

The GAC met with the EWG and exchanged views on the model proposed by the EWG for the next generation directory service as a successor to the WHOIS service.

The GAC referenced its WHOIS principles from 2007 and its Beijing advice regarding the WHOIS Review Team recommendations, which both have served as input for the work of the EWG. The GAC expressed its concerns about the risks associated with centralized storage of data in one repository in one jurisdiction, and raised a series of issues relating to the proposed data repository structure and access including security, data accuracy, consistency with national law, accreditation of database users, and privacy governance. The GAC looks forward to further discussion of these issues as the working group progresses.

9. Briefing from Architelos

The GAC received a briefing on the TLD market and its development from Architelos, a consultancy focused on the domain name industry.

The GAC warmly thanks the GNSO, the SSAC, the ccNSO and the ALAC, as well as all those among the ICANN community who have contributed to the dialogue with the GAC in Durban.

III. Internal Matters

1. The GAC held its second capacity building session for new and existing members on 13 July, which included an update to the GAC on internationalization and the ICANN's strategy for engagement in the Africa region.
2. The GAC welcomed Madagascar, Namibia, São Tomé and Príncipe, Swaziland, and Zambia to the GAC as members.
3. The chair and vice chairs provided an update in Durban on progress with regard to ACIG providing secretariat support to the GAC.

IV. GAC Advice to the Board²

1. New gTLDs

1. GAC Objections to Specific Applications (ref. Beijing Communiqué 1.c.)

a. The GAC Advises the ICANN Board that:

- i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:³

² To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>

³ Module 3.1: "The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

1. The application for .amazon (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591)
2. The application for .thai (application number 1-2112-4478)

b. guangzhou (IDN in Chinese), shenzhen (IDN in Chinese), .spa and .yun

- i. The GAC agrees to leave the applications below for further consideration and **advises the ICANN Board:**
 - i. Not to proceed beyond initial evaluation until the agreements between the relevant parties are reached.
 1. The applications for .spa (application number 1-1309-12524 and 1-1619-92115)
 2. The application for .yun (application number 1-1318-12524)
 3. The application for .guangzhou (IDN in Chinese - application number 1-1121-22691)
 4. The application for .shenzhen (IDN in Chinese - application number 1-1121-82863)

2. .wine and .vin (ref. Beijing Communiqué 1.c.)

- a. **The GAC advises the ICANN Board that:**
 - i. The GAC considered the two strings .vin and .wine and due to the complexity of the matter was unable to conclude at this meeting. As a result the GAC agreed to take thirty days additional time with a view to conclude on the matter.

3. .date and .persiangulf (ref. Beijing Communiqué 1.c.)

- a. **The GAC has finalised its consideration of the following strings, and does not object to them proceeding:**
 - i. .date (application number 1-1247-30301)
 - ii. .persiangulf (application number 1-2128-55439)

4. .indians and .ram

- a. **The GAC Advises the ICANN Board that:**
 - i. The GAC has noted the concerns expressed by the Government of India not to proceed with the applications for .indians and .ram.

5. Protection of IGO Acronyms

- a. The GAC reaffirms its previous advice from the Toronto and Beijing Meetings that IGOs are in an objectively different category to other rights holders thus warranting special protection by ICANN. IGOs perform important global public missions with public funds and as such, their identifiers (both their names and their acronyms) need preventative protection in an expanded DNS.
- b. The GAC understands that the ICANN Board, further to its previous assurances, is prepared to fully implement GAC advice; an outstanding matter to be finalized is the practical and effective implementation of the permanent preventative protection of IGO acronyms at the second level.
- c. **The GAC advises the ICANN Board that:**
 - i. The GAC is interested to work with the IGOs and the NGPC on a complementary cost-neutral mechanism that would:
 - a. provide notification to an IGO if a potential registrant seeks to register a domain name matching the acronym of an IGO at the second level, giving the IGO a reasonable opportunity to express concerns, if any; and
 - b. allow for an independent third party to review any such registration request, in the event of a disagreement between an IGO and potential registrant.
 - ii. The initial protections for IGO acronyms confirmed by the NGPC at its meeting of 2 July 2013 should remain in place until the dialogue between the GAC, NGPC, and IGO representatives ensuring the implementation of preventative protection for IGO acronyms at the second level is completed.

5. Protection of Red Cross/Red Crescent Acronyms

- a. **The GAC advises the ICANN Board that**
 - i. The same complementary cost neutral mechanisms to be worked out (as above in 4.c.i.) for the protection of acronyms of IGOs be used to also protect the acronyms of the International Committee

of the Red Cross (ICRC/CICR) and the International Federation of Red Cross and Red Crescent Societies (IFRC/FICR).

6. Category 1 Safeguard Advice

- i. The GAC has met with the NGPC to discuss the Committee's response to GAC advice contained in the Beijing Communique on safeguards that should apply to Category 1 new gTLDs. **The GAC Advises the ICANN Board that:**
 - 1. The GAC will continue the dialogue with the NGPC on this issue.

7. Geographic Names and Community Applications

a. Geographic Names

- i. The GAC recommends that ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with regard to the protection of terms with national, cultural, geographic and religious significance, in accordance with the 2007 GAC Principles on New gTLDs.

b. Community Applications

- i. The GAC reiterates its advice from the Beijing Communique regarding preferential treatment for all applications which have demonstrable community support, while noting community concerns over the high costs for pursuing a Community Objection process as well as over the high threshold for passing Community Priority Evaluation.
- ii. **Therefore the GAC advises the ICANN Board to:**
 - a. Consider to take better account of community views, and improve outcomes for communities, within the existing framework, independent of whether those communities have utilized ICANN's formal community processes to date.

8. DNS Security and Stability

- a. The GAC shares the security and stability concerns expressed by the SSAC regarding Internal Name Certificates and Dotless Domains. The GAC requests the ICANN Board to provide a written briefing about:
 - i. how ICANN considers this SSAC advice with a view to implementation as soon as possible. The GAC believes that all such stability and security analysis should be made publicly available prior to the delegation of new gTLDs.
 - ii. **The GAC Advises the ICANN Board to:**

- a. As a matter of urgency consider the recommendations contained in the SSAC Report on Dotless Domains (SAC053) and Internal Name Certificates (SAC057).

9. Registry and Registrar Agreements and Conflicts with Law

- a. It was noted that there are provisions in the Registry Agreement and Registrar Accreditation Agreement that may conflict with applicable law in certain countries, in particular privacy and data retention, collection and processing law. The importance of having adequate procedures to avoid these conflicts was highlighted.

V. Next Meeting

The GAC will meet during the 48th ICANN meeting in Buenos Aires, Argentina.

Annex 10

Paris Convention for the Protection of Industrial Property

**of March 20, 1883,
as revised at Brussels on December 14, 1900,
at Washington on June 2, 1911,
at The Hague on November 6, 1925,
at London on June 2, 1934,
at Lisbon on October 31, 1958,
and at Stockholm on July 14, 1967,
and as amended on September 28, 1979**

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Article 1

Establishment of the Union; Scope of Industrial Property²

- (1) The countries to which this Convention applies constitute a Union for the protection of industrial property.
- (2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.
- (3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.
- (4) Patents shall include the various kinds of industrial patents recognized by the laws of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition, etc.

Article 2

National Treatment for Nationals of Countries of the Union

- (1) Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.
- (2) However, no requirement as to domicile or establishment in the country where protection is claimed may be imposed upon nationals of countries of the Union for the enjoyment of any industrial property rights.
- (3) The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property are expressly reserved.

Article 3

Same Treatment for Certain Categories of Persons as for Nationals of Countries of the Union

Nationals of countries outside the Union who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union shall be treated in the same manner as nationals of the countries of the Union.

Article 4
A to I. Patents, Utility Models, Industrial Designs,
Marks, Inventors' Certificates: *Right of Priority*
G. Patents: *Division of the Application*

A.

(1) Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.

(2) Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.

(3) By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the subsequent fate of the application.

B. Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, the putting on sale of copies of the design, or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession. Rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country of the Union

C.

(1) The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks.

(2) These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period.

(3) If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.

(4) A subsequent application concerning the same subject as a previous first application within the meaning of paragraph (2), above, filed in the same country of the Union shall be considered as the first application, of which the filing date shall be the starting point of the period of priority, if, at the time of filing the subsequent application, the said previous application has been withdrawn, abandoned, or

refused, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

D.

(1) Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and the country in which it was made. Each country shall determine the latest date on which such declaration must be made.

(2) These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto.

(3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority which received such application, shall not require any authentication, and may in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.

(4) No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority.

(5) Subsequently, further proof may be required.

Any person who avails himself of the priority of a previous application shall be required to specify the number of that application; this number shall be published as provided for by paragraph (2), above.

E.

(1) Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs.

(2) Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa.

F. No country of the Union may refuse a priority or a patent application on the ground that the applicant claims multiple priorities, even if they originate in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country.

With respect to the elements not included in the application or applications whose priority is claimed, the filing of the subsequent application shall give rise to a right of priority under ordinary conditions.

G.

(1) If the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.

(2) The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.

H. Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

I.

(1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model, or an inventor's certificate.

Article 4bis**Patents: Independence of Patents Obtained for the Same Invention in Different Countries**

(1) Patents applied for in the various countries of the Union by nationals of countries of the Union shall be independent of patents obtained for the same invention in other countries, whether members of the Union or not.

(2) The foregoing provision is to be understood in an unrestricted sense, in particular, in the sense that patents applied for during the period of priority are independent, both as regards the grounds for nullity and forfeiture, and as regards their normal duration.

(3) The provision shall apply to all patents existing at the time when it comes into effect.

(4) Similarly, it shall apply, in the case of the accession of new countries, to patents in existence on either side at the time of accession.

(5) Patents obtained with the benefit of priority shall, in the various countries of the Union, have a duration equal to that which they would have, had they been applied for or granted without the benefit of priority.

Article 4ter

Patents: *Mention of the Inventor in the Patent*

The inventor shall have the right to be mentioned as such in the patent.

Article 4quater

Patents: *Patentability in Case of Restrictions of Sale by Law*

The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law.

Article 5

A. Patents: *Importation of Articles; Failure to Work or Insufficient Working; Compulsory Licenses*

B. Industrial Designs: *Failure to Work; Importation of Articles*

C. Marks: *Failure to Use; Different Forms; Use by Co-proprietors*

D. Patents, Utility Models, Marks, Industrial Designs: *Marking*

A.

(1) Importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail forfeiture of the patent.

(2) Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work.

(3) Forfeiture of the patent shall not be provided for except in cases where the grant of compulsory licenses would not have been sufficient to prevent the said abuses. No proceedings for the forfeiture or revocation of a patent may be instituted before the expiration of two years from the grant of the first compulsory license.

(4) A compulsory license may not be applied for on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last; it shall be refused if the

patentee justifies his inaction by legitimate reasons. Such a compulsory license shall be non-exclusive and shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill which exploits such license.

(5) The foregoing provisions shall be applicable, *mutatis mutandis*, to utility models.

B. The protection of industrial designs shall not, under any circumstance, 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.

C.

(1) If, in any country, use of the registered mark is compulsory, the registration may be cancelled only after a reasonable period, and then only if the person concerned does not justify his inaction.

(2) Use of a trademark by the proprietor in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered in one of the countries of the Union shall not entail invalidation of the registration and shall not diminish the protection granted to the mark.

(3) Concurrent use of the same mark on identical or similar goods by industrial or commercial establishments considered as co-proprietors of the mark according to the provisions of the domestic law of the country where protection is claimed shall not prevent registration or diminish in any way the protection granted to the said mark in any country of the Union, provided that such use does not result in misleading the public and is not contrary to the public interest.

D. No indication or mention of the patent, of the utility model, of the registration of the trademark, or of the deposit of the industrial design, shall be required upon the goods as a condition of recognition of the right to protection.

Article 5bis

All Industrial Property Rights: *Period of Grace for the Payment of Fees for the Maintenance of Rights;* Patents: *Restoration*

(1) A period of grace of not less than six months shall be allowed for the payment of the fees prescribed for the maintenance of industrial property rights, subject, if the domestic legislation so provides, to the payment of a surcharge.

(2) The countries of the Union shall have the right to provide for the restoration of patents which have lapsed by reason of non-payment of fees.

Article 5ter

Patents: *Patented Devices Forming Part of Vessels, Aircraft, or Land Vehicles*

In any country of the Union the following shall not be considered as infringements of the rights of a patentee:

(i) the use on board vessels of other countries of the Union of devices forming the subject of his patent in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of the said country, provided that such devices are used there exclusively for the needs of the vessel;

(ii) the use of devices forming the subject of the patent in the construction or operation of aircraft or land vehicles of other countries of the Union, or of accessories of such aircraft or land vehicles, when those aircraft or land vehicles temporarily or accidentally enter the said country.

Article 5quater

Patents: *Importation of Products Manufactured by a Process Patented in the Importing Country*

When a product is imported into a country of the Union where there exists a patent protecting a process of manufacture of the said product, the patentee shall have all the rights, with regard to the imported product, that are accorded to him by the legislation of the country of importation, on the basis of the process patent, with respect to products manufactured in that country.

Article 5quinquies **Industrial Designs**

Industrial designs shall be protected in all the countries of the Union.

Article 6

Marks: *Conditions of Registration; Independence of Protection of Same Mark in Different Countries*

(1) The conditions for the filing and registration of trademarks shall be determined in each country of the Union by its domestic legislation.

(2) However, an application for the registration of a mark filed by a national of a country of the Union in any country of the Union may not be refused, nor may a registration be invalidated, on the ground that filing, registration, or renewal, has not been effected in the country of origin.

(3) A mark duly registered in a country of the Union shall be regarded as independent of marks registered in the other countries of the Union, including the country of origin.

Article 6bis

Marks: *Well-Known Marks*

(1) The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.

(2) A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.

(3) No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith.

Article 6ter

Marks: *Prohibitions concerning State Emblems, Official Hallmarks, and Emblems of Intergovernmental Organizations*

(1)

(a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.

(b) The provisions of subparagraph (a), above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection.

(c) No country of the Union shall be required to apply the provisions of subparagraph (b), above, to the prejudice of the owners of rights acquired in good faith before the entry into force, in that country, of this Convention. The countries of the Union shall not be required to apply the said provisions when the use

or registration referred to in subparagraph (a), above, is not of such a nature as to suggest to the public that a connection exists between the organization concerned and the armorial bearings, flags, emblems, abbreviations, and names, or if such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization.

(2) Prohibition of the use of official signs and hallmarks indicating control and warranty shall apply solely in cases where the marks in which they are incorporated are intended to be used on goods of the same or a similar kind.

(3)

(a) For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make available to the public the lists so communicated. Nevertheless such communication is not obligatory in respect of flags of States.

(b) The provisions of subparagraph (b) of paragraph (1) of this Article shall apply only to such armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations as the latter have communicated to the countries of the Union through the intermediary of the International Bureau.

(4) Any country of the Union may, within a period of twelve months from the receipt of the notification, transmit its objections, if any, through the intermediary of the International Bureau, to the country or international intergovernmental organization concerned.

(5) In the case of State flags, the measures prescribed by paragraph (1), above, shall apply solely to marks registered after November 6, 1925.

(6) In the case of State emblems other than flags, and of official signs and hallmarks of the countries of the Union, and in the case of armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations, these provisions shall apply only to marks registered more than two months after receipt of the communication provided for in paragraph (3), above.

(7) In cases of bad faith, the countries shall have the right to cancel even those marks incorporating State emblems, signs, and hallmarks, which were registered before November 6, 1925.

(8) Nationals of any country who are authorized to make use of the State emblems, signs, and hallmarks, of their country may use them even if they are similar to those of another country.

(9) The countries of the Union undertake to prohibit the unauthorized use in trade of the State armorial bearings of the other countries of the Union, when the use is of such a nature as to be misleading as to the origin of the goods.

(10) The above provisions shall not prevent the countries from exercising the right given in paragraph (3) of Article 6quinquies, Section B, to refuse or to invalidate the registration of marks incorporating, without authorization, armorial bearings, flags, other State emblems, or official signs and hallmarks adopted by a country of the Union, as well as the distinctive signs of international intergovernmental organizations referred to in paragraph (1), above.

Article 6quater
Marks: Assignment of Marks

(1) When, in accordance with the law of a country of the Union, the assignment of a mark is valid only if it takes place at the same time as the transfer of the business or goodwill to which the mark belongs, it shall suffice for the recognition of such validity that the portion of the business or goodwill located in that country be transferred to the assignee, together with the exclusive right to manufacture in the said country, or to sell therein, the goods bearing the mark assigned.

(2) The foregoing provision does not impose upon the countries of the Union any obligation to regard as valid the assignment of any mark the use of which by the assignee would, in fact, be of such a nature as to mislead the public, particularly as regards the origin, nature, or essential qualities, of the goods to which the mark is applied.

Article 6quinquies
Marks: Protection of Marks Registered in One Country of the Union in the Other Countries of the Union

A.

(1) Every trademark duly registered in the country of origin shall be accepted for filing and protected as is in the other countries of the Union, subject to the reservations indicated in this Article. Such countries may, before proceeding to final registration, require the production of a certificate of registration in the country of origin, issued by the competent authority. No authentication shall be required for this certificate.

(2) Shall be considered the country of origin the country of the Union where the applicant has a real and effective industrial or commercial establishment, or, if he has no such establishment within the Union, the country of the Union where he has his domicile, or, if he has no domicile within the Union but is a national of a country of the Union, the country of which he is a national.

B. Trademarks covered by this Article may be neither denied registration nor invalidated except in the following cases:

(i) when they are of such a nature as to infringe rights acquired by third parties in the country where protection is claimed;

(ii) when they are devoid of any distinctive character, or consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, place of origin, of the goods, or the time of production, or have become customary in the current language or in the bona fide and established practices of the trade of the country where protection is claimed;

(iii) when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. It is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of the legislation on marks, except if such provision itself relates to public order.

This provision is subject, however, to the application of Article 10bis.

C.

(1) In determining whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time the mark has been in use.

(2) No trademark shall be refused in the other countries of the Union for the sole reason that it differs from the mark protected in the country of origin only in respect of elements that do not alter its distinctive character and do not affect its identity in the form in which it has been registered in the said country of origin.

D. No person may benefit from the provisions of this Article if the mark for which he claims protection is not registered in the country of origin.

E. However, in no case shall the renewal of the registration of the mark in the country of origin involve an obligation to renew the registration in the other countries of the Union in which the mark has been registered.

F. The benefit of priority shall remain unaffected for applications for the registration of marks filed within the period fixed by Article 4, even if registration in the country of origin is effected after the expiration of such period.

Article 6sexies

Marks: *Service Marks*

The countries of the Union undertake to protect service marks. They shall not be required to provide for the registration of such marks.

Article 6septies

Marks: *Registration in the Name of the Agent or Representative of the Proprietor Without the Latter's Authorization*

- (1) If the agent or representative of the person who is the proprietor of a mark in one of the countries of the Union applies, without such proprietor's authorization, for the registration of the mark in his own name, in one or more countries of the Union, the proprietor shall be entitled to oppose the registration applied for or demand its cancellation or, if the law of the country so allows, the assignment in his favor of the said registration, unless such agent or representative justifies his action.
- (2) The proprietor of the mark shall, subject to the provisions of paragraph (1), above, be entitled to oppose the use of his mark by his agent or representative if he has not authorized such use.
- (3) Domestic legislation may provide an equitable time limit within which the proprietor of a mark must exercise the rights provided for in this Article.

Article 7

Marks: *Nature of the Goods to which the Mark is Applied*

The nature of the goods to which a trademark is to be applied shall in no case form an obstacle to the registration of the mark.

Article 7bis

Marks: *Collective Marks*

- (1) The countries of the Union undertake to accept for filing and to protect collective marks belonging to associations the existence of which is not contrary to the law of the country of origin, even if such associations do not possess an industrial or commercial establishment.
- (2) Each country shall be the judge of the particular conditions under which a collective mark shall be protected and may refuse protection if the mark is contrary to the public interest.
- (3) Nevertheless, the protection of these marks shall not be refused to any association the existence of which is not contrary to the law of the country of origin, on the ground that such association is not established in the country where protection is sought or is not constituted according to the law of the latter country.

Article 8

Trade Names

A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark.

Article 9

Marks, Trade Names: *Seizure, on Importation, etc., of Goods Unlawfully Bearing a Mark or Trade Name*

- (1) All goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or trade name is entitled to legal protection.
- (2) Seizure shall likewise be effected in the country where the unlawful affixation occurred or in the country into which the goods were imported.
- (3) Seizure shall take 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.
- (4) The authorities shall not be bound to effect seizure of goods in transit.
- (5) If the legislation of a country does not permit seizure on importation, seizure shall be replaced by prohibition of importation or by seizure inside the country.
- (6) If the legislation of a country permits neither seizure on importation nor prohibition of importation nor seizure inside the country, then, until such time as the legislation is modified accordingly, these measures shall be replaced by the actions and remedies available in such cases to nationals under the law of such country.

Article 10

False Indications: *Seizure, on Importation, etc., of Goods Bearing False Indications as to their Source or the Identity of the Producer*

- (1) The provisions of the preceding Article shall apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant.
- (2) Any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in such goods 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, shall in any case be deemed an interested party.

Article 10bis

Unfair Competition

- (1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.

(2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

(3) The following in particular shall be prohibited:

(i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

(iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

Article 10ter

Marks, Trade Names, False Indications, Unfair Competition: Remedies, Right to Sue

(1) The countries of the Union undertake to assure to nationals of the other countries of the Union appropriate legal remedies effectively to repress all the acts referred to in Articles 9, 10, and 10bis.

(2) They undertake, further, to provide measures to permit federations and associations representing interested industrialists, producers, or merchants, provided that the existence of such federations and associations is not contrary to the laws of their countries, to take action in the courts or before the administrative authorities, with a view to the repression of the acts referred to in Articles 9, 10, and 10bis, in so far as the law of the country in which protection is claimed allows such action by federations and associations of that country.

Article 11

Inventions, Utility Models, Industrial Designs, Marks: Temporary Protection at Certain International Exhibitions

(1) The countries of the Union shall, in conformity with their domestic legislation, grant temporary protection to patentable inventions, utility models, industrial designs, and trademarks, in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of any of them.

(2) Such temporary protection shall not extend the periods provided by Article 4. If, later, the right of priority is invoked, the authorities of any country may provide that the period shall start from the date of introduction of the goods into the exhibition.

(3) Each country may require, as proof of the identity of the article exhibited and of the date of its introduction, such documentary evidence as it considers necessary.

Article 12
Special National Industrial Property Services

- (1) Each country of the Union undertakes to establish a special industrial property service and a central office for the communication to the public of patents, utility models, industrial designs, and trademarks.
- (2) This service shall publish an official periodical journal. It shall publish regularly:
- (a) the names of the proprietors of patents granted, with a brief designation of the inventions patented;
 - (b) the reproductions of registered trademarks.

Article 13
Assembly of the Union

- (1)
- (a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 13 to 17.
 - (b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
 - (c) The expenses of each delegation shall be borne by the Government which has appointed it.
- (2)
- (a) The Assembly shall:
 - (i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;
 - (ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as “the International Bureau”) referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as “the Organization”), due account being taken of any comments made by those countries of the Union which are not bound by Articles 13 to 17;
 - (iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

- (iv) elect the members of the Executive Committee of the Assembly;
- (v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;
- (vi) determine the program and adopt the biennial budget of the Union, and approve its final accounts;
- (vii) adopt the financial regulations of the Union;
- (viii) establish such committees of experts and working groups as it deems appropriate to achieve the objectives of the Union;
- (ix) determine which countries not members of the Union and which intergovernmental and international nongovernmental organizations shall be admitted to its meetings as observers;
- (x) adopt amendments to Articles 13 to 17;
- (xi) take any other appropriate action designed to further the objectives of the Union;
- (xii) perform such other functions as are appropriate under this Convention;
- (xiii) subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3)

(a) Subject to the provisions of subparagraph (b), a delegate may represent one country only.

(b) Countries of the Union grouped under the terms of a special agreement in a common office possessing for each of them the character of a special national service of industrial property as referred to in Article 12 may be jointly represented during discussions by one of their number.

(4)

(a) Each country member of the Assembly shall have one vote.

(b) One-half of the countries members of the Assembly shall constitute a quorum.

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own

procedure, all such decisions shall take effect only if the conditions, set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 17(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(5)

(a) Subject to the provisions of subparagraph (b), a delegate may vote in the name of one country only.

(b) The countries of the Union referred to in paragraph (3)(b) shall, as a general rule, endeavor to send their own delegations to the sessions of the Assembly. If, however, for exceptional reasons, any such country cannot send its own delegation, it may give to the delegation of another such country the power to vote in its name, provided that each delegation may vote by proxy for one country only. Such power to vote shall be granted in a document signed by the Head of State or the competent Minister.

(6) Countries of the Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(7)

(a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly.

(8) The Assembly shall adopt its own rules of procedure.

Article 14 **Executive Committee**

(1) The Assembly shall have an Executive Committee.

(2)

(a) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 16(7)(b), have an ex officio seat on the Committee.

(b) The Government of each country member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(3) The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements established in relation with the Union to be among the countries constituting the Executive Committee.

(5)

(a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be re-elected, but only up to a maximum of two-thirds of such members.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6)

(a) The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly in respect of the draft program and biennial budget of the Union prepared by the Director General;

(iii) *[deleted]*

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) take all necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly;

(vi) perform such other functions as are allocated to it under this Convention.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(7)

(a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

(b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

(8)

(a) Each country member of the Executive Committee shall have one vote.

(b) One-half of the members of the Executive Committee shall constitute a quorum.

(c) Decisions shall be made by a simple majority of the votes cast.

(d) Abstentions shall not be considered as votes.

(e) A delegate may represent, and vote in the name of, one country only.

(9) Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.

(10) The Executive Committee shall adopt its own rules of procedure.

Article 15 **International Bureau**

(1)

(a) Administrative tasks concerning the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Literary and Artistic Works.

(b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.

(c) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.

(2) The International Bureau shall assemble and publish information concerning the protection of industrial property. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of industrial property. Furthermore, it shall furnish the International Bureau with all the publications of its industrial property service of direct concern to the protection of industrial property which the International Bureau may find useful in its work.

(3) The International Bureau shall publish a monthly periodical.

(4) The International Bureau shall, on request, furnish any country of the Union with information on matters concerning the protection of industrial property.

(5) The International Bureau shall conduct Studies, and shall provide services, designed to facilitate the protection of industrial property.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee, and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.

(7)

(a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 13 to 17.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.

(8) The International Bureau shall carry out any other tasks assigned to it.

Article 16

Finances

(1)

(a) The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Union shall be financed from the following sources:

- (i) contributions of the countries of the Union;
- (ii) fees and charges due for services rendered by the International Bureau in relation to the Union;
- (iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;
- (iv) gifts, bequests, and subventions;
- (v) rents, interests, and other miscellaneous income.

(4)

(a) For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows³:

Class I	25
Class II	20
Class III	15
Class IV	10
Class V	5
Class VI	3
Class VII	1

(b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, the country must announce such change to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the said session.

(c) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.

(d) Contributions shall become due on the first of January of each year.

(e) A country which is in arrears in the payment of its contributions may not exercise its right to vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its right to vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(f) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.

(6)

(a) The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(7)

(a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an ex officio seat on the Executive Committee.

(b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 17 **Amendment of Articles 13 to 17**

(1) Proposals for the amendment of Articles 13, 14, 15, 16, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 13, and to the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

Article 18 **Revision of Articles 1 to 12 and 18 to 30**

(1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) For that purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.

(3) Amendments to Articles 13 to 17 are governed by the provisions of Article 17.

Article 19

Special Agreements

It is understood that the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, in so far as these agreements do not contravene the provisions of this Convention.

Article 20

Ratification or Accession by Countries of the Union; Entry Into Force

(1)

(a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification and accession shall be deposited with the Director General.

(b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply:

(i) to Articles 1 to 12, or

(ii) to Articles 13 to 17.

(c) Any country of the Union which, in accordance with subparagraph (b), has excluded from the effects of its ratification or accession one of the two groups of Articles referred to in that subparagraph may at any later time declare that it extends the effects of its ratification or accession to that group of Articles. Such declaration shall be deposited with the Director General.

(2)

(a) Articles 1 to 12 shall enter into force, with respect to the first ten countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted under paragraph (1)(b)(i), three months after the deposit of the tenth such instrument of ratification or accession.

(b) Articles 13 to 17 shall enter into force, with respect to the first ten countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted under paragraph (1)(b)(ii), three months after the deposit of the tenth such instrument of ratification or accession.

(c) Subject to the initial entry into force, pursuant to the provisions of subparagraphs (a) and (b), of each of the two groups of Articles referred to in paragraph (1)(b)(i) and (ii), and subject to the provisions of paragraph (1)(b), Articles 1 to 17 shall, with respect to any country of the Union, other than those referred to in subparagraphs (a) and (b), which deposits an instrument of ratification or accession or any country of the Union which deposits a declaration pursuant to paragraph (1)(c), enter into force three

months after the date of notification by the Director General of such deposit, unless a subsequent date has been indicated in the instrument or declaration deposited. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(3) With respect to any country of the Union which deposits an instrument of ratification or accession, Articles 18 to 30 shall enter into force on the earlier of the dates on which any of the groups of Articles referred to in paragraph (1)(b) enters into force with respect to that country pursuant to paragraph (2)(a), (b), or (c).

Article 21

Accession by Countries Outside the Union; Entry Into Force

(1) Any country outside the Union may accede to this Act and thereby become a member of the Union. Instruments of accession shall be deposited with the Director General.

(2)

(a) With respect to any country outside the Union which deposits its instrument of accession one month or more before the date of entry into force of any provisions of the present Act, this Act shall enter into force, unless a subsequent date has been indicated in the instrument of accession, on the date upon which provisions first enter into force pursuant to Article 20(2)(a) or (b); provided that:

(i) if Articles 1 to 12 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 1 to 12 of the Lisbon Act,

(ii) if Articles 13 to 17 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 13 and 14(3), (4), and (5), of the Lisbon Act.

If a country indicates a subsequent date in its instrument of accession, this Act shall enter into force with respect to that country on the date thus indicated.

(b) With respect to any country outside the Union which deposits its instrument of accession on a date which is subsequent to, or precedes by less than one month, the entry into force of one group of Articles of the present Act, this Act shall, subject to the proviso of subparagraph (a), enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(3) With respect to any country outside the Union which deposits its instrument of accession after the date of entry into force of the present Act in its entirety, or less than one month before such date, this Act shall enter into force three months after the date on which its accession has been notified by the Director General,

unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

Article 22 **Consequences of Ratification or Accession**

Subject to the possibilities of exceptions provided for in Articles 20(1)(b) and 28(2), ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

Article 23 **Accession to Earlier Acts**

After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.

Article 24 **Territories**

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3)

(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in the instrument of which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

Article 25 **Implementation of the Convention on the Domestic Level**

(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time a country deposits its instrument of ratification or accession, it will be in a position under its domestic law to give effect to the provisions of this Convention.

Article 26 **Denunciation**

(1) This Convention shall remain in force without limitation as to time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

Article 27 **Application of Earlier Acts**

(1) The present Act shall, as regards the relations between the countries to which it applies, and to the extent that it applies, replace the Convention of Paris of March 20, 1883 and the subsequent Acts of revision.

(2)

(a) As regards the countries to which the present Act does not apply, or does not apply in its entirety, but to which the Lisbon Act of October 31, 1958, applies, the latter shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).

(b) Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act applies, the London Act of June 2, 1934, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).

(c) Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act, nor the London Act applies, the Hague Act of November 6, 1925, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).

(3) Countries outside the Union which become party to this Act shall apply it with respect to any country of the Union not party to this Act or which, although party to this Act, has made a declaration pursuant to Article 20(1)(b)(i). Such countries recognize that the said country of the Union may apply, in its relations with them, the provisions of the most recent Act to which it is party.

Article 28 **Disputes**

(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

Article 29 **Signature, Languages, Depositary Functions**

(1)

(a) This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the English, German, Italian, Portuguese, Russian and Spanish languages, and such other languages as the Assembly may designate.

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

(2) This Act shall remain open for signature at Stockholm until January 13, 1968.

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Article 20(1)(c), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Article 24.

Article 30 **Transitional Provisions**

(1) Until the first Director General assumes office, references in this Act to the International Bureau of the Organization or to the Director General shall be deemed to be references to the Bureau of the Union or its Director, respectively.

(2) Countries of the Union not bound by Articles 13 to 17 may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided under Articles 13 to 17 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall give written notification to that effect to the Director General; such notification shall be effective from the date of its receipt. Such countries shall be deemed to be members of the Assembly until the expiration of the said period.

(3) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.

(4) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

¹ This Table of Contents is added for the convenience of the reader. It does not appear in the signed text of the Convention.

² Articles have been given titles to facilitate their identification. There are no titles in the signed (French) text.

³ The Governing Bodies of WIPO and the Unions administered by WIPO adopted with effect from January 1, 1994, a new contribution system that replaces the contribution system set forth in Article 16(4)(a), (b) and (c) of the Paris Convention. Details concerning that system may be obtained from the International Bureau of WIPO (*Editor's note*).

Annex 11



ANNEX 1C

**AGREEMENT ON TRADE-RELATED ASPECTS OF
INTELLECTUAL PROPERTY RIGHTS**

- PART I GENERAL PROVISIONS AND BASIC PRINCIPLES
- PART II STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF
INTELLECTUAL PROPERTY RIGHTS
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 2. Trademarks
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- PART VII INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS



AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

Members,

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognizing, to this end, the need for new rules and disciplines concerning:

- (a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;
- (b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;
- (c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;
- (d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and
- (e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;

Hereby agree as follows:



PART I

GENERAL PROVISIONS AND BASIC PRINCIPLES

*Article 1**Nature and Scope of Obligations*

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.
2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.
3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.¹ In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.² Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

*Article 2**Intellectual Property Conventions*

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).
2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

¹When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

²In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.



Article 3

National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection³ of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4

Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

- (a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;
- (b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;
- (c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;
- (d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

³For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.



Article 5

*Multilateral Agreements on Acquisition or
Maintenance of Protection*

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 6

Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 7

Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8

Principles

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.
2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.



PART II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE
AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

*Article 9**Relation to the Berne Convention*

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.
2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

*Article 10**Computer Programs and Compilations of Data*

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).
2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

*Article 11**Rental Rights*

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

*Article 12**Term of Protection*

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years



from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13

Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 14

Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.
2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.
3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).
4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.
5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.
6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.



SECTION 2: TRADEMARKS

Article 15

Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.
2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).
3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.
4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.
5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Article 16

Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.
2. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.
3. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or



services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17

Exceptions

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18

Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19

Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.
2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20

Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.



Article 21

Licensing and Assignment

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

SECTION 3: GEOGRAPHICAL INDICATIONS

Article 22

Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:
 - (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
 - (b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).
3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.
4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.



Article 23

Additional Protection for Geographical Indications for Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.⁴
2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.
3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.
4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

Article 24

International Negotiations; Exceptions

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.
2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.
3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

⁴Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.



4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

- (a) before the date of application of these provisions in that Member as defined in Part VI; or
- (b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

SECTION 4: INDUSTRIAL DESIGNS

Article 25

Requirements for Protection

1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.



2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

Article 26

Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. The duration of protection available shall amount to at least 10 years.

SECTION 5: PATENTS

Article 27

Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.⁵ Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

- (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The

⁵For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.



provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

Article 28

Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:
 - (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing⁶ for these purposes that product;
 - (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.
2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29

Conditions on Patent Applicants

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.
2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 30

Exceptions to Rights Conferred

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

⁶This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.

*Article 31**Other Use Without Authorization of the Right Holder*

Where the law of a Member allows for other use⁷ of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

- (a) authorization of such use shall be considered on its individual merits;
- (b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
- (c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;
- (d) such use shall be non-exclusive;
- (e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- (f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;
- (g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;
- (h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
- (i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;
- (j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

⁷"Other use" refers to use other than that allowed under Article 30.



- (k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;
- (l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:
 - (i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;
 - (ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and
 - (iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 32

Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33

Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.⁸

Article 34

Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

⁸It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.



- (a) if the product obtained by the patented process is new;
 - (b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.
2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.
3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Article 35

Relation to the IPIC Treaty

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

Article 36

Scope of the Protection

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:⁹ importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

Article 37

Acts Not Requiring the Authorization of the Right Holder

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum

⁹The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.



equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply *mutatis mutandis* in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

Article 38

Term of Protection

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices¹⁰ so long as such information:

- (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) has commercial value because it is secret; and
- (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against

¹⁰For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.



unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.
2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.
3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.
4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.



PART III

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

Article 41

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.
2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.
4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.
5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.



SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

*Article 42**Fair and Equitable Procedures*

Members shall make available to right holders¹¹ civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

*Article 43**Evidence*

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

*Article 44**Injunctions*

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against

¹¹For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.



such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

Article 45

Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 46

Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 47

Right of Information

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.



Article 48

Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

Article 49

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3: PROVISIONAL MEASURES

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

- (a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;
- (b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a



reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES¹²

Article 51

Suspension of Release by Customs Authorities

Members shall, in conformity with the provisions set out below, adopt procedures¹³ to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods¹⁴ may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are

¹²Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

¹³It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

¹⁴For the purposes of this Agreement:

- (a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;
- (b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.



met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52

Application

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 53

Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.
2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

Article 54

Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.



Article 55

Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

Article 56

Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

Article 57

Right of Inspection and Information

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58

Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:

- (a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;



- (b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 55;
- (c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59

Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60

De Minimis Imports

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

SECTION 5: CRIMINAL PROCEDURES

Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.



PART IV

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY
RIGHTS AND RELATED *INTER-PARTES* PROCEDURES*Article 62*

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.
2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.
3. Article 4 of the Paris Convention (1967) shall apply *mutatis mutandis* to service marks.
4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.
5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V

DISPUTE PREVENTION AND SETTLEMENT

*Article 63**Transparency*

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.
2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful.



The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6ter of the Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64

Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

PART VI

TRANSITIONAL ARRANGEMENTS

Article 65

Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.



3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.

5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66

Least-Developed Country Members

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Article 67

Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.



PART VII

INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

*Article 68**Council for Trade-Related Aspects of
Intellectual Property Rights*

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

*Article 69**International Cooperation*

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

*Article 70**Protection of Existing Subject Matter*

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.
2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.
3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.
4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were



commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.

6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

- (a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;
- (b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and
- (c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

Article 71

Review and Amendment

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals



thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

Article 72

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 73

Security Exceptions

Nothing in this Agreement shall be construed:

- (a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;
 - (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Annex 12



Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods

of April 14, 1891

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**Act revised at Washington on June 2, 1911,
at The Hague on November 6, 1925,
at London on June 2, 1934,
and at Lisbon on October 31, 1958**

Article 1

- (1) All goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries.
- (2) Seizure shall also be effected in the country where the false or deceptive indication of source has been applied, or into which the goods bearing the false or deceptive indication have been imported.
- (3) If the laws of a country do not permit seizure upon importation, such seizure shall be replaced by prohibition of importation.
- (4) If the laws of a country permit neither seizure upon importation nor prohibition of importation nor seizure within the country, then, until such time as the laws are modified accordingly, those measures shall be replaced by the actions and remedies available in such cases to nationals under the laws of such country.
- (5) 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 shall be applicable.

Article 2

(1) Seizure shall take place at the instance of the customs authorities, who shall 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 shall then follow its normal course.

(2) The authorities shall not be bound to effect seizure in the case of transit.

Article 3

These provisions shall not prevent the vendor 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 error as to the true source of the wares.

Article 3bis

The countries to which this Agreement applies also undertake 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.

Article 4

The courts of each country shall decide what appellations, on account of their generic character, do not fall within the provisions of this Agreement, regional appellations concerning the source of products of the vine being, however, excluded from the reservation specified by this Article.

Article 5

(1) Countries of the Union for the Protection of Industrial Property which have not acceded to this Agreement may accede at their request in the manner prescribed by Article 16 of the General Convention.

(2) The provisions of Articles 16*bis* and 17*bis* of the General Convention shall apply to this Agreement.

Article 6

(1) This Act shall be ratified and the instruments of ratification deposited at Berne not later than May 1, 1963. It shall come into force, between the countries in whose names it has been ratified, one month after that date. However, if before that date it has been ratified in the name of at least six countries, it shall come into force, between those countries, one month after the deposit of the sixth ratification has been notified to them by the Government of the Swiss Confederation, and, in the countries in whose names it has been ratified at a later date, one month after the notification of each of such ratifications.

(2) Countries in whose names the instrument of ratification has not been deposited within the period provided for in the preceding paragraph may accede under the terms of Article 16 of the General Convention.

(3) This Act shall, as regards the relations between the countries to which it applies, replace the Agreement concluded at Madrid on April 14, 1891, and the Acts resulting from subsequent revisions.

(4) As regards countries to which this Act does not apply, but to which the Madrid Agreement revised at London in 1934 applies, the latter shall remain in force.

(5) Similarly, as regards countries to which neither this Act nor the Madrid Agreement revised at London applies, the Madrid Agreement revised at The Hague in 1925 shall remain in force.

(6) Similarly, as regards countries to which neither this Act nor the Madrid Agreement revised at London nor the Madrid Agreement revised at The Hague applies, the Madrid Agreement revised at Washington in 1911 shall remain in force.

II

Additional Act of Stockholm of July 14, 1967

Article 1

Transfer of Depositary Functions in Respect of the Madrid Agreement

Instruments of accession to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, of April 14, 1891 (hereinafter designated as “ the Madrid Agreement ”), as revised at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, and at Lisbon on October 31, 1958 (hereinafter designated as “ the Lisbon Act ”), shall be deposited with the Director General of the World Intellectual Property Organization (hereinafter designated as “ the Director General ”), who shall notify such deposits to the countries party to the Agreement.

Article 2

Adaptation of References in the Madrid Agreement to Certain Provisions of the Paris Convention

References in Articles 5 and 6(2) of the Lisbon Act to Articles 16, 16*bis*, and 17*bis*, of the General Convention shall be construed as references to those provisions of the Stockholm Act of the Paris Convention for the Protection of Industrial Property which correspond to the said Articles.

Article 3

Signature and Ratification of, and Accession to, the Additional Act

(1) This Additional Act may be signed by any country party to the Madrid Agreement and may be ratified or acceded to by any country which has ratified or acceded to the Lisbon Act.

(2) Instruments of ratification or accession shall be deposited with the Director General.

Article 4

Automatic Acceptance of Articles 1 and 2 by Countries Acceding to the Lisbon Act

Any country which has not ratified or acceded to the Lisbon Act shall become bound also by Articles 1 and 2 of this Additional Act from the date on which its accession to the Lisbon Act enters into force, provided however that, if on the said date this Additional Act has not yet entered into force pursuant to Article 5(1),

then, such country shall become bound by Articles 1 and 2 of this Additional Act only from the date of entry into force of this Additional Act pursuant to Article 5(1).

Article 5 **Entry Into Force of the Additional Act**

(1) This Additional Act shall enter into force on the date on which the Stockholm Convention of July 14, 1967, establishing the World Intellectual Property Organization has entered into force, provided however that, if by that date at least two ratifications or accessions to this Additional Act have not been deposited, then, this Additional Act shall enter into force on the date on which two ratifications or accessions to this Additional Act have been deposited.

(2) With respect to any country which deposits its instrument of ratification or accession after the date on which this Additional Act has entered into force pursuant to the foregoing paragraph, this Additional Act shall enter into force three months after the date on which its ratification or accession has been notified by the Director General.

Article 6 **Signature, etc., of the Additional Act**

(1) This Additional Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(2) This Additional Act shall remain open for signature at Stockholm until the date of its entry into force pursuant to Article 5(1).

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Additional Act to the Governments of all countries party to the Madrid Agreement and, on request, to the Government of any other country.

(4) The Director General shall register this Additional Act with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries party to the Madrid Agreement of signatures, deposits of instruments of ratification or accession, entry into force, and other relevant notifications.

Article 7 **Transitional Provision**

Until the first Director General assumes office, references in this Additional Act to him shall be construed as references to the Director of the United International Bureaux for the Protection of Intellectual Property.