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GIs A Candidate For The Exclusive Club Of Appellations Of Origin At WIPO

By Catherine Saez, Intellectual Property Watch on 19/12/2011 @ 2:47 pm

World Intellectual Property Organization members last week debated a possible new instrument to protect products with specific origins and characteristics.

The current agreement covering such products has attracted few members since its entry into force in 1966, so a designated working group was tasked with finding possible ways to make the system more attractive to new members. One particular focus was the potential inclusion of geographical indications (GIs) in the text, and their level of protection.

The fourth meeting of the WIPO Working Group on the Development of the Lisbon System was held from 12-16 December ^[1], with the aim of discussing a draft instrument ^[2] [pdf] prepared by the WIPO secretariat.

"This week has been the liveliest of the sessions of the working group," Mihály Ficsor, vice-president of the Hungarian Intellectual Property Office and chair of the meeting, told *Intellectual Property Watch*. "There were a lot of interactions, more than ever before, showing an interest for the system, and that the members are taking the exercise seriously," he said.

Members started to go over the articles of the draft text provided by the WIPO Secretariat and, according to the draft summary of the chair ^[3] [pdf], they mainly covered the basis for protection and definitions (articles 2 and 3), the scope of protection (articles 4 and 9), and prior use (articles 12,13, 14 and 18).

Scope of Protection, Equal Treatment Problematic

Currently the Lisbon agreement covers only appellations of origin, and one exercise of the working group is to include GIs in the Lisbon system. The definition of GIs in the draft text is largely based on the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), a source told *Intellectual Property Watch*.

A sticking point of the discussions this week was the scope of protection as, according to Ficsor, most countries already parties to the agreement would like the same high and uniform level of protection for appellations of origin and GIs. But this might create a problem for potential newcomers and run counter to the objective of attracting new members to the system.

A delegate from Switzerland, which is an observer country, told *Intellectual Property Watch* that "a number of countries would like to have an instrument that could provide an efficient registration and protection system for geographical indications in addition to appellations of origin, since GIs have become more of an international standard than appellations of origin, following the entry into force of the WTO TRIPS Agreement."

The Lisbon system includes the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration ^[4]. In this agreement, appellations of origin "means the geographical denomination of a country, region, or locality, which serves to designate a product Originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors."

According to WIPO ^[5], this definition entails two factors, on the one hand the geographical environment, such as soil and climate, and on the other hand, a set of human factors, such as the traditional knowledge used in the place where the product

originates.

This definition is more stringent and imposes more conditions than the definition of geographical indications given by the TRIPS. Member states at the WTO have been trying to reach agreement on the issues of GIs for years without success. GIs are protected under TRIPS Article 22, with wines and spirits enjoying a higher level of protection in Article 23. The establishment of a multilateral system of notification and registration of wines and spirits, mandated by Article 23.4 has eluded consensus.

"It appears that because the Lisbon System is a closed club of countries" and a voluntary system "to which countries choose to be part of, rather than a mandatory system like the one at the WTO where rules apply to all member countries, the new WIPO forum system could and should go beyond the WTO standards and negotiations on GIs and provide an international registration system for GIs and, more important, strengthen their protection," a participant told *Intellectual Property Watch*.

"The fact that the system of registration in the current system has been considered too rigid and that the system only applies to appellations of origin, discouraged a great number of countries to join the system," the source said.

Amendments to Regulations Adopted

The Lisbon Agreement is supplemented by regulations, and during its 19th ordinary session from 26 September-5 October, the Lisbon Union Assembly members agreed on two amendments to those regulations, Ficsor said. According to the WIPO website, the last version of these regulations was adopted in September 2009, with a date of entry into force of 1 January 2010. According to the [draft report](#) ^[6] [pdf] of the 19th session, the two amendments referred to the optional contents of international applications relating to GIs, and notifications of invalidation by countries who decline to protect a registered product.

Countries which are parties to the Lisbon Agreement become members of the Lisbon Union Assembly, which has the authority to modify the regulations. This decision to adopt the amendments is "already an achievement," said Ficsor.

The working group has been working on a two-track approach, Ficsor told *Intellectual Property Watch*. The first track was to work on possible amendments, and the second track, which was the subject of this week's discussions, deals with the longer term approach as members are working on "a draft new instrument to replace or supplement the current system," he said.

27 Members, Scarce African Registrations, Observers

A total of 27 countries are party to the agreement: Algeria, Bulgaria, Burkina Faso, Congo, Costa Rica, Cuba, Czech Republic, France, Gabon, Georgia, Haiti, Hungary, Iran, Israel, Italy, Mexico, Moldova, Montenegro, Nicaragua, Peru, Portugal, Serbia, Slovakia, South Korea, Macedonia, Togo, and Tunisia.

The number of registrations varies greatly between members, with 564 registrations for France, 79 registrations for the Czech Republic, 19 registrations for Cuba, 19 for Algeria, and 7 for Tunisia. No other African country has a registration through the system and no African member countries were represented in the working group. Some 14 countries were represented as observers, such as Australia, Germany, Spain, Switzerland, Thailand, the United States, and Viet Nam.

Asked by *Intellectual Property Watch* why no African member countries except Algeria and Tunisia had any registration under the current Lisbon system, Ficsor said it takes time to get organised and to agree on product classification and procedures.

The private-sector Organization for an International Geographical Indications Network (OriGIn) Managing Director, Massimo Vittori, in an oral statement called for WIPO to provide technical assistance for members to use the system, in particular in Africa. In order to make the instrument attractive, he told *Intellectual Property Watch* later, changing the system is not enough, technical assistance is needed, especially to help countries determine which products could be eligible for protection.

"There is a need to develop technical assistance for those countries which are part of the system but are not using it. The instrumental importance of technical assistance to contribute to the identification and structuring of appellations of origin and GIs in developing countries, in particular in Africa, was also highlighted as a key factor to enable the Lisbon system to be a real success in the future," a source told *Intellectual Property*

Watch.

Future Work

The working group, which was established by the Lisbon Union Assembly at its meeting in September 2008, has a target of two more meetings of the working group in 2012 and maybe to reach a decision to convene a diplomatic conference (on a GI instrument) in 2013, Ficsor said.

According to the draft summary by the Chair, the focus of the next session of the working group should be the examination and discussion of a revised version of the draft new instrument and the related draft regulations.

The summary also indicated that a number of delegations "would prefer to maintain the Lisbon Agreement in combination with a protocol to it". But some other delegations "were not opposed to a revision of the Lisbon Agreement."

During the week, to try to reconcile points of view, Ficsor said, an idea "which might gain support" was suggested to make a two-tier approach and have an instrument with two chapters. One on registration, with a system without substantive requirements, along the lines of the Madrid System for the International Registration of Marks ^[7] and the Hague System for the International Registration of Industrial Designs ^[8], and a second chapter dealing with substantive requirements such as the scope of protection, the definition and the eligibility. Countries would then be free to apply only the first chapter, he said. The suggestion was made by a non-governmental organisation, according to a source.

The draft summary of the chair was adopted with some changes in paragraphs 2, 3, 15, 16 and 22, with paragraph 24 being deleted.

In particular, paragraph 15 was amended to say that a large number of delegations wished for an international instrument laying down a high and uniform level of protection for both GIs and appellations of origin, and that some delegations underlined the objective of the review of the Lisbon system to allow for a much larger membership. Paragraph 16 was amended with the last sentence saying "parties would be free to opt for such Chapter 2" instead of "parties would be free to opt out from such Chapter 2".

According to an observer country source, most of the Lisbon member countries and observer countries did not appear to be inclined to agree with the two-tier approach. Most countries, and NGOs representing GI producers, are seeking the same protection for GIs as appellations of origin and do not wish to promote a mere registration system, which would undermine the efforts to create within WIPO an instrument more ambitious than the TRIPS, the source told *Intellectual Property Watch*.

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- [European Audit Of GIs Shows Need For Clear Rules, Awareness](#) ^[10]
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URLs in this post:

[1] from 12-16 December: http://www.wipo.int/meetings/en/details.jsp?meeting_id=24524

[2] draft instrument:

http://www.wipo.int/edocs/mdocs/mdocs/en/li_wg_dev_4/li_wg_dev_4_2.pdf

[3] summary of the chair: <http://www.ip-watch.org/weblog/wp-content/uploads/2011/12/WG-Lisbon-System-Chair-Summary-Dec-2011.pdf>

[4] Lisbon Agreement for the Protection of Appellations of Origin and their International

Registration:

http://www.wipo.int/lisbon/en/legal_texts/lisbon_agreement.html#P22_1099

[5] According to WIPO: **<http://www.wipo.int/lisbon/en/general/>**

[6] draft report:

http://www.wipo.int/edocs/mdocs/govbody/en/li_a_27/li_a_27_3_prov.pdf

[7] Madrid System for the International Registration of Marks:

<http://www.wipo.int/madrid/en/>

[8] Hague System for the International Registration of Industrial Designs:

<http://www.wipo.int/hague/en/>

[9] New Guide Issued To Help Developing Countries Embrace GIs, As WTO, WIPO Meet:

<http://www.ip-watch.org/weblog/2011/12/10/new-guide-issued-to-help-developing-countries-embrace-gis-as-wto-wipo-meet/>

[10] European Audit Of GIs Shows Need For Clear Rules, Awareness: **<http://www.ip-watch.org/weblog/2011/11/16/european-audit-of-gis-shows-need-for-clear-rules-awareness/>**

[11] Draft WIPO Instrument On Genetic Resources Shows Lists Of Options: **<http://www.ip-watch.org/weblog/2011/03/04/draft-wipo-instrument-on-genetic-resources-shows-lists-of-options/>**