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RE: SURVEY ON THE LISBON SYSTEM

In response to the letter of the 21 October 2009, we are sending answers to the questions of World Intellectual Property organizations on the survey of the Lisbon System for the Protection of Appellations of Origin and their International Registration.

Encl. 3 pages.

Sincerely yours,

Vice-Minister

Aušrys Macijauskas

## ANNEX I

### Questions to be Addressed in Response to the Survey on the Lisbon System

#### The Basis for Protection in the Country of Origin

Some have interpreted the phrase “recognized and protected as such” in Article 1(2) of the Lisbon Agreement as restricting eligibility for registration and protection under the Agreement to appellations of origin recognized and protected under *sui generis* legislation in the country of origin. Others take the view that this phrase does not impose a means by which an appellation of origin should be protected in the country of origin, nor the specific legal form of protection, as long as the geographical denomination in question meets the definition provisions of Article 2 of the Agreement. Rule 5(2)(a)(vi) of the Regulations under the Lisbon Agreement broadly refers to protection in the country of origin by virtue of legislative provisions, administrative provisions, judicial decisions or registration.

Question 1: Should the basis for protection in the country of origin in Article 1(2) of the Agreement and Rule 5(2)(a)(vi) of the Regulations be revised, in view of the different means of protection existing around the world for geographical indications?

*Yes, the Lisbon Agreement and the Rules should define basic provisions for the recognition of protection of origin, aiming to standardize the essential elements which may be inadequate by the national legislation of different countries.*

#### Terminology and Definitions

A number of domestic laws exist under which protection is available for appellations of origin on the basis of a definition that corresponds to the definition provisions of Article 2 of the Lisbon Agreement. Other domestic laws provide protection for geographical indications on the basis of the definition provisions of Article 22.1 of the TRIPS Agreement. Domestic legislation also exists with both a definition for appellations of origin and a definition for geographical indications or variations of those terms. Moreover, there are also domestic laws dealing with the same subject matter without defining the term “appellation of origin” or the term “geographical indication”.

Question 2: Should the definition provisions of Article 2 of the Lisbon Agreement be amended?

*We believe, that the terms of the appellation of origin and geographical indication should be equally defined and comprehensible under both - the Lisbon Agreement and the TRIPS Agreement. The Lisbon Agreement does not define the term of geographical indication, which unlike appellation of origin, is defined by the TRIPS Agreement and EU legislation.*

#### Scope of Protection

The Lisbon Agreement does not define the terms “usurpation” and “imitation”, as contained in its Article 3, but the negotiating history would appear to indicate that these terms are aimed to prevent use of an internationally registered appellation of origin on a product of the same kind not originating from the area to which the appellation of origin refers or a

product of the same kind that, while originating in that area, does not meet the quality or characteristics on which protection for the appellation of origin is based.

Question 3: Should Article 3 of the Lisbon Agreement be amended so as to address the protection of appellations of origin against use on products that are not of the same kind and, if so, on the basis of what criteria?

*In our opinion, the Article 3 of the Agreement should clarify and lay out in more detail the cases of usurpation and imitation.*

Question 4: What amendments would be necessary to Article 3 in connection with the answer to questions 1 and 2 above?

*We suggest the Article 3 of the Lisbon Agreement for protection to adjust in accordance with Article 13 of Council Regulation (EC) No. 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuff of 20 March 2006.*

#### Effects of Registration

The negotiating history of the Lisbon Agreement shows that the Lisbon system is meant to: (a) require a country of origin to provide information in international applications allowing the other member countries proper examination as to whether they can protect the internationally registered appellations of origin concerned; (b) require these other countries to take position within a period of one year from receipt of the notification of an international registration and, in case they submit a declaration of refusal, to specify the grounds for such refusal; and (c) shield such an appellation of origin against becoming a generic denomination.

Question 5: As regards point (a) above, are there elements in the application and registration procedures requiring improvement and, if so, which are these elements?

*No comments.*

Question 6: As regards point (b) above, are there elements in the procedures for the notification of refusals, withdrawals of refusals and statements of grant of protection requiring improvement and, if so, which are these elements?

*No comments.*

Question 7: As regards point (c) above, would there be a need to amend Article 6 of the Lisbon Agreement, in order to allow for certain exceptions, or does the phrase "cannot, in that country, be deemed to have become generic" provide sufficient leeway in that respect?

*No comments.*

Question 8: Are there elements in the procedures of Rule 16 of the Regulations under the Lisbon Agreement concerning the notification by a member country of an invalidation of

the effects of an international registration and its recording in the International Register requiring amendment and, if so, which are these elements?

*No comments.*

Prior Users

Question 9: Would there be a need to amend Article 5(6) of the Lisbon Agreement, or does the fact that Article 5(6) of the Lisbon Agreement and Rule 12 of the Regulations under the Agreement only apply in case a member country does not notify a declaration of refusal provide sufficient leeway in this respect?

*No comments.*

Other Issues

Question 10: What other issues concerning law or practice directly or indirectly related to the functioning of the Lisbon system do you consider require amendment or modification of the existing Lisbon Agreement and would you like to bring to the attention of the Working Group on the Development of the Lisbon System?

*No comments.*