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

Original: French

**REVIEW UNDER ARTICLE 24.2 OF THE APPLICATION OF THE
PROVISIONS OF THE SECTION OF THE TRIPS AGREEMENT
ON GEOGRAPHICAL INDICATIONS**

RESPONSES TO THE CHECKLIST OF QUESTIONS¹

SWITZERLAND

*Corrigendum**

The following editorial corrections are advised concerning the English version only of document IP/C/W/117/Add.13/Rev.1, the revised set of responses to the Checklist of Questions provided by Switzerland. Annexed to the present document, for ease of reference, is the full corrected text of the revised Swiss response to the Checklist of Questions.

Question 1:

"taking into consideration additional requirements" should read "taking into consideration possible additional requirements"

"An indication of source qualified as Swiss..." should read "A qualified Swiss indication of source..."

Question 6:

"In the context of the Ordinance on Wine and certain cantonal legislation" should read "In the context of the Ordinance on Wine and cantonal legislations..."

Question 8.4:

"Registered appellation of origin (*appellation d'origine contrôlée*, AOC):..." should read "Controlled appellation of origin (*appellation d'origine contrôlée*, AOC):..."

"Local wines with their own traditional names: local wine produced from grapes grown in the geographical area of a single canton, bearing a traditional name...." should read "Local wines with a specific traditional denomination: local wine produced from grapes grown in the geographical area of a single canton, bearing a traditional denomination..."

Question 10

"Agricultural PAOs and PGIs: the registration application must include, most notably, the name of the applicant group and evidence of its representativeness; the name to be registered; evidence that the name is not generic; evidence that the product comes from the geographical area concerned (historical records and traceability); evidence of the link with the geographical environment or geographical origin (evidence that the product is typical of the area concerned)..." should read "Agricultural PAOs and PGIs: the registration application must include, most notably, the name of the applicant group and proof of its representativeness; the name to be registered; proof that the

¹ Documents IP/C/13 and IP/C/13/Add.1.

* In English only.

name is not generic; proof that the product comes from the geographical area concerned (historical records and traceability); evidence of the link with the geographical environment or geographical origin (typicity of the product linked to its terroir)...."

"proof that the applicant group is representative" should read "evidence that the applicant group is representative"

Question 13

"consultation with the cantons and the parties concerned" should read "consultation with the cantons and the stakeholders"

"PAOs and PGIs (excluding wine)" should read "PAOs and PGIs (other than wine)"

"Swiss wine GIs: the cantons define the production regions and areas, as well as the conditions of use for registered appellations of origin and traditional names that concern their territory, following consultation with producers. The Confederation currently limits itself to basic definitions for wines with registered appellations of origin, local wines, local wines with their own traditional names, and Swiss table wines..." should read "Swiss wine GIs: the cantons define the production regions and areas, as well as the conditions of use for controlled appellations of origin and traditional denominations that concern their territory, following consultation with producers. The Confederation currently limits itself to basic definitions for wines with controlled appellations of origin, local wines, local wines with a specific traditional denomination, and Swiss table wines..."

Question 17

"Appellations of origin for Swiss wines: the definition and protection of GIs are based on federal and cantonal legislation, without any registration procedure; this renders the question irrelevant, as there are not, officially, any applicants" should read "Appellations of origin for Swiss wines: the definition and protection of GIs are based on federal and cantonal legislation, without any registration procedure; this renders the question irrelevant, as there are not, formally, any applicants."

"Federal Council ordinance under Article 50 of the LPM: the application is generally filed by an economic sector" should read "Federal Council ordinance under Article 50 of the LPM: the request is generally raised by an economic sector".

Question 18

"Swiss wine GIs: in their legislation, the cantons define the use of appellations of origin and local wines with their own traditional names ..." should read "Swiss wine GIs: in their legislation, the cantons define the use of appellations of origin and local wines with a specific traditional denomination..."

Question 19

"PAOs and PGIs (excluding wine)" should read "PAOs and PGIs (other than wine)"

"Federal Council ordinance under Article 50 of the LPM: while applications are generally filed by an economic sector" should read "Federal Council ordinance under Article 50 of the LPM: while requests are generally raised by economic sectors"

ANNEX**1 RESPONSES TO THE QUESTIONS IN DOCUMENT IP/C/13****A. GENERAL****1. Is protection for geographical indications provided through unfair competition law, e.g., passing off, false designation of origin; through a formal procedure for notification/registration before protection is available; or through both? Does the recognition of a geographical indication require registration?**

Under Swiss law, the protection of a geographical indication does not require its registration. This protection is ensured, for all products, through protection of indications of source, which is granted automatically under the Law on the Protection of Trademarks and Indications of Source (LPM), without any formal notification or registration procedure, provided that the legal conditions are satisfied (see replies to questions 8 to 10 and 13 below for more details). The basis for the definition of a region or geographical area is set forth in Article 48 of the LPM. Where the use of an unregistered geographical indication is contested, it falls to a court to define the region or geographical area concerned, taking into consideration possible additional requirements other than solely the geographical source, such as observance of customary or locally prescribed manufacturing or processing principles or quality requirements, and taking into account the understanding of the relevant public and, where appropriate, the influence that the additional requirements have on the reputation of the products.

A formal procedure for registration as an appellation of origin or geographical indication exists for all products apart from wine (for more details, see reply to question 2 below).

Geographical indications for Swiss wines are defined by specific regulations at federal and cantonal level. Protection is therefore not granted through registration, but via legislative channels. For more details, see reply to question 2 below.

A qualified Swiss indication of source, within the meaning of Article 48.2 and 48.3 of the LPM, may be recognized and defined by a Federal Council ordinance under Article 50 of the LPM.

A qualified geographical indication or indication of source protected by a Swiss or foreign *sui generis* title may be registered as a geographical mark under Article 27a et seq. of the LPM.

The Federal Law on Unfair Competition (LCD) of 19 December 1986 focuses most notably on inaccurate or misleading descriptions of goods, or measures liable to give rise to misunderstanding with respect to the goods of another person, and may be applied concurrently – in civil but not criminal law – to the protection derived from a special intellectual property (IP) law. Special IP laws only exclude the application of the LCD where they regulate the matter thoroughly and, in particular, where they provide more extensive protection. Where an intellectual property right cannot be protected under a special law, or where the relevant protection has not been obtained or no longer exists, protection cannot be acquired under the LCD. In other words, it is possible to have concurrent application of the LCD and IP laws, but not to obtain an extension of the protection afforded by the IP laws by seeking recourse to the LCD.

2. Is there one single regime of protection of geographical indications for all products? If not, identify the different regimes.

The single regime of protection for geographical indications is that of the protection of indications of source, without registration, under Article 47 et seq. of the LPM (see reply to question 1 above).

There are also a number of regimes offering protection according to the nature of the product.

Geographical indications (both Swiss and foreign) for all types of products (apart from wines) may benefit from recognition as protected appellations of origin (PAO) or protected geographical indications (PGI) through registration in a federal register. This registration can only be obtained by observing certain strict rules (representativeness of the applicant group, specification, public consultation, etc.; for further details, see replies to questions 8 to 10 below).

PAOs and PGIs for agricultural products, processed agricultural products, forestry products and processed forestry products (hereinafter, agricultural PAOs and PGIs) are registered under Article 16 of the Law on Agriculture (LAgr) and Article 41a of the Law on Forests. PAOs and PGIs for non-agricultural products (hereinafter, non-agricultural PAOs and PGIs) are registered under Article 50a of the LPM.

Geographical indications for Swiss wines are recognized by the cantons for wines produced in their territory, via cantonal legislation and in accordance with the provisions of the LAgr and Federal Ordinance on Wine.

PAOs and PGIs registered in Switzerland, Swiss or foreign wine appellations in conformity with the requirements of Article 63 of the LAgr, and indications of source that are the subject of an ordinance under Article 50.2 of the LPM or an equivalent foreign regulation, may also be registered as geographical marks under Article 27a et seq. of the LPM.

3. Do(es) the regime(s) of protection of geographical indications also extend to services?

No. However, indications of source for services benefit from the protection granted under Article 49 of the LPM, which does not require registration, and may be the subject of a Federal Council ordinance under Article 50 of the LPM.

4. What provisions of law or regulations are directed to the recognition of geographical indications required by Articles 22.2 and 23.1 of the TRIPS Agreement? Citations to laws should be provided and, if the texts of the laws have not been notified to the WTO, copies should be provided pursuant to Article 63.2.

The relevant laws and regulations are as follows:

- Federal Law on the Protection of Trademarks and Indications of Source of 28 August 1992 (LPM; RS 232.11)²: in particular, Articles 27a-27e; 47-52; 55-60; 64-65, 67-72h.
- Ordinance on the Protection of Trademarks of 23 December 1992 (OPM; RS 232.111)³: in particular, Articles 52a-52n and 53-56.
- Ordinance on the Registration of Appellations of Origin and Geographical Indications for Non-Agricultural Products of 2 September 2015 (Ordinance on Non-Agricultural PAOs and PGIs; RS 232.112.2).⁴
- Ordinance on the Use of the Designation "Swiss" for Watches of 23 December 1971 (RS 232.119).⁵
- Federal Law on Agriculture of 29 April 1998 (LAgr; RS 910.1)⁶: in particular, Articles 14, 16, 63-64, 169, and 172-175.
- Federal Law on Forests of 4 October 1991 (LFo; RS 921.0): Article 41a.
- Ordinance on the Protection of Appellations of Origin and Geographical Indications for Agricultural Products, Processed Agricultural Products, Forestry Products and Processed Forestry Products of 28 May 1997 (Ordinance on PAOs and PGIs; RS 910.12).⁷
- Ordinance of the Federal Department of Economic Affairs, Education and Research (DEFR) on the Minimum Control Requirements for Protected Appellations of Origin and

² Text notified to the TRIPS Council on 19 April 2017 (document IP/N/1/CHE/23). Last amended under section I of the Federal Law of 21 June 2013, in force since 1 January 2017 (RO 2015 3631; FF 2009 7711).

³ Text notified to the TRIPS Council on 18 April 2017 (document IP/N/1/CHE/24).

⁴ Text notified to the TRIPS Council on 18 April 2017 (document IP/N/1/CHE/10).

⁵ Text notified to the TRIPS Council on 18 April 2017 (document IP/N/1/CHE/11).

⁶ Text notified to the TRIPS Council on 18 April 2017 (document IP/N/1/CHE/14).

⁷ Text notified to the TRIPS Council on 18 April 2017 (document IP/N/1/CHE/G/15).

Geographical Indications of 11 June 1999 (Ordinance on the Control of PAOs and PGIs; RS 910.124).⁸

- Ordinance on Viticulture and the Importation of Wine of 14 November 2007 (Ordinance on Wine; RS 916.140)⁹ and various related cantonal regulations.

5. If the required recognition of geographical indications is not provided through statutes or regulations, please explain, in detail, the mechanism or mechanisms through which the protection required is provided.

This question is not relevant to Switzerland. See the replies above and below.

6. Please provide a few examples of domestic geographical indications protected in accordance with the means discussed above and indicate the means by which such protection is provided.

- In the context of the Law on the Protection of Trademarks and Indications of Source (LPM): "Swiss" or "Geneva" for watches, "Swiss" for chocolate.
- In the context of the Ordinance on PAOs and PGIs (agricultural products): 33 Swiss names had been registered as PAOs or PGIs by 31 May 2017, including *Gruyère* (PAO), *Emmentaler* (PAO), *Viande séchée des Grisons* (PGI), *Longeole* (PGI), *Cardon épineux genevois* (PAO), *Pain de seigle valaisan* (PAO) and *Damassine* (PAO).
- In the context of the Ordinance on the Registration of Appellations of Origin and Geographical Indications for Non-Agricultural Products: no registration applications have yet been submitted, as this Ordinance has only been in force since 1 January 2017.
- In the context of the Ordinance on Wine and cantonal legislations: local appellations such as *Rougemont*; regional appellations such as *Lavaux*, *Lac de Biemme* and *Vully*; cantonal appellations such as *Valais*, *Ticino* and *Schaffhausen*; names of local wines such as *Nostrano* and *Goron*.

7. Is the higher level of protection required for wines and spirits under Article 23.2 of the TRIPS Agreement provided for any other product? If so, please specify such products and the law under which they are protected.

The higher level of protection required for wines and spirits under Article 23.2 of the TRIPS Agreement is provided, as for all other products, under Article 47.3 and 47.3*bis* of the LPM. Furthermore, under Article 16.3, 16.6 and 16.7 of the LAgr and Article 50*a*.4 of the LPM, geographical indications registered as protected appellations of origin or protected geographical indications may not become generic.

B. DEFINITION AND CRITERIA FOR RECOGNITION

8. How are geographical indications defined?

The definitions vary according to the applicable laws and regulations.

8.1 In the context of the LPM

Indication of source: any direct or indirect reference to the geographical source of products or services, including references to properties or quality in relation to the source. Geographical names or signs that are not considered by the relevant public to refer to the source of goods or services are not indications of source within the meaning of the LPM (Article 47.1 and 47.2 of the LPM).

- Direct indications of source are precise designations of the geographical source of a product or service: names of places, continents, countries, regions, towns, districts or

⁸ Text notified to the TRIPS Council on 18 April 2017 (document IP/N/1/CHE/16).

⁹ Text notified to the TRIPS Council on 24 September 2013 (document IP/N/1/CHE/G/23).

valleys, or other names that, in the mind of the public, refer to a precise geographical source.

- Indirect indications of source do not refer to a particular place explicitly, but by means of verbal or figurative expressions such as names or representations of mountains, lakes, rivers or monuments of national or international renown, well-known emblems of cities, or names or figurative representations of famous historical figures such as "William Tell".

For certain qualified indications of source, which include geographical indications, it is not enough for the product to come from the place designated by the indication of source: additional requirements must be met. These requirements are defined, where necessary, by the courts, in accordance with the understanding of the relevant public and the influence that they will have on the reputation of the products concerned (Article 48.2 and 48.3 of the LPM).

8.2 In the context of the Ordinance on Non-Agricultural PAOs and PGIs, Article 2:

- Appellation of origin: name identifying a product as originating in a particular country, region or locality, as having a certain quality or characteristics that are essentially or exclusively due to a particular geographical environment, with its inherent natural and human factors, and as having been produced in its entirety within the defined geographical area.
- Geographical indication: name identifying a product as originating in a particular country, region or locality and having a certain quality, reputation or other characteristic essentially attributable to this geographical origin.

8.3 In the context of the Ordinance on PAOs and PGIs (agricultural products), Articles 2 and 3:

- Appellation of origin: name of a region, a place or, in exceptional cases, a country, that is used to describe a product originating in that region, place or country, the quality or characteristics of which are essentially or exclusively due to a particular geographical environment, with its inherent natural and human factors, and which is produced, processed and refined within a defined geographical area. Traditional names of products that meet these conditions may be registered as appellations of origin.
- Geographical indication: name of a region, a place or, in exceptional cases, a country, that is used to describe a product originating in that region, place or country, which has a specific quality, reputation or other characteristic attributable to that geographical origin and is produced, processed or refined within a defined geographical area. Traditional names of products that meet these conditions may be registered as geographical indications.

8.4 In the context of the Ordinance on Wine, Articles 21 to 24:

- Controlled appellation of origin (*appellation d'origine contrôlée*, AOC): name of a canton or a geographical area of a canton. The cantons establish the requirements applicable to AOCs. These must provide for: the delimitation of the geographical area in which at least the grapes are produced; a list of authorized vine varieties; a list of authorized cultivation methods; a minimum natural sugar content for each authorized vine variety; a maximum yield per unit area for each authorized vine variety; a list of authorized vinification methods; a system for the analysis and organoleptic examination of wine ready for sale. The cantons verify that AOC wines meet the requirements they have established.
- Local wine (*vin de pays*): wine named after a region or after part of a region where it extends over more than one canton. Such wine must meet the following requirements: the grapes must be harvested in the geographical area after which the wine is named; the minimum natural sugar content required is at least 14.4° Brix for white grape varieties and 15.2° Brix for red grape varieties; the yield per unit area is limited to 1.8 kg/m² for white grape varieties and 1.6 kg/m² for red grape varieties.

- Local wines with a specific traditional denomination: local wine produced from grapes grown in the geographical area of a single canton, bearing a traditional denomination that is listed in Annex 3 [of the Ordinance on Wine] and defined by the legislation of the canton concerned.
- Swiss table wine: wine made from grapes harvested in Switzerland with a required minimum natural sugar content of at least 13.6° Brix for white grape varieties and 14.4° Brix for red grape varieties.

9. Would such a definition comprise geographical indications identifying products of a certain quality or reputation which are indirectly linked to a specific region?

The notion of "indirect link" does not seem consistent with the definition of a geographical indication under the TRIPS Agreement. At least one stage of production must take place in the geographical area concerned for the product to be considered as originating in the country, region or locality in question. Depending on the nature of the product and the protection mechanism, this stage may be the production of raw materials (for example, in certain cases, grapes from a defined geographical area may be transformed into wine outside this geographical area, with the said wine nevertheless benefiting from the geographical indication pertaining to the region in which the grapes were grown) or the processing of raw materials not from the defined geographical area (for example, the metals used to manufacture a *Swiss watch* do not generally come from Switzerland).

10. In determining whether recognition should be given a geographical indication, what criteria are considered?

See the criteria listed in the definitions in the reply to question 8 above.

Where "criteria" is understood to mean the information that must accompany an application for the recognition of a geographical indication (GI) as a PAO or PGI, they are as follows:

- Agricultural PAOs and PGIs: the registration application must include, most notably, the name of the applicant group and proof of its representativeness; the name to be registered; proof that the name is not generic; proof that the product comes from the geographical area concerned (historical records and traceability); evidence of the link with the geographical environment or geographical origin (typicity of the product linked to its terroir); a description of authentic and consistently applied local methods, if any; the product specification; proof that the registration application was approved at a meeting of the representatives of the group; and a summary of the above-mentioned information (Articles 6 and 7 of the Ordinance on PAOs and PGIs).
- Non-agricultural PAOs and PGIs: the registration application must include, most notably, the name, address and composition of the applicant group; evidence that the applicant group is representative; evidence of the essential or exclusive link between the quality, characteristics or reputation of the product and its geographical origin; and the product specification (Articles 5 and 6 of the Ordinance on Non-Agricultural PAOs and PGIs).

11. Is there any human creativity involved in the making of specific products under protection by the system of geographical indications? If so, how much? And do these products involve any human factors?

Human factors are explicitly mentioned in the definition of appellation of origin, but are also present, to varying degrees, in the requirements set out in Article 48.2 and 48.3 of the LPM, or in the processes that confer upon products benefiting from a PGI their quality, reputation or other particular characteristics, or in the criteria for the definition of geographical indications for Swiss wines.

12. Are there any other intellectual property rights involved, such as patents for example?

Other intellectual property rights apply regardless of GI protection, in the various areas concerned.

13. What authority, if any, may define the geographic region or area for which rights are claimed and on what basis is such definition made?

Protection without registration under the LPM: the basis for the definition of a region or geographical area is set out by the provisions of Article 48 of the LPM. Where the use of an unregistered geographical indication is contested, it falls to a court to define the region or geographical area concerned, taking into consideration additional requirements other than solely the geographical source, such as observance of customary or locally prescribed manufacturing or processing principles or quality requirements, and taking into account the understanding of the relevant public and, where appropriate, the influence that the additional requirements have on the reputation of the products.

Federal Council ordinance under Article 50 of the LPM: the definition of the region or geographical area is proposed by the economic sector concerned and approved by the Federal Council following consultation with the cantons and the stakeholders.

PAOs and PGIs (other than wine): the authority in charge of the register, the Federal Office for Agriculture (OFAG) (agricultural products) or the Swiss Federal Institute of Intellectual Property (IPI) (non-agricultural products), is responsible for approving the definition of the geographical area proposed by the representative group of producers in its registration application, on the basis of the definition of the PAO or the PGI, taking into account elements identified during the material examination of the registration application, observations made during the consultations with the federal and cantonal authorities, and any objections regarding the delimitation of the geographical area.

Swiss wine GIs: the cantons define the production regions and areas, as well as the conditions of use for controlled appellations of origin and traditional denominations that concern their territory, following consultation with producers. The Confederation currently limits itself to basic definitions for wines with controlled appellations of origin, local wines, local wines with a specific traditional denomination, and Swiss table wines, under Articles 21 to 24 of the Ordinance on Wine (see reply 8.4 to question 8 above).

14. Does your legislation contain criteria for homonymous geographical indications for wines?

The provisions of the TRIPS Agreement are applicable; the Ordinance on Wine does not contain any specific provisions on homonymous geographical indications for wines. Some specific cases of homonymy are covered by the provisions of the bilateral agreements to which Switzerland is party, for example, Article 7 of the Protocol to the Treaty of 14 May 1974 between the Swiss Confederation and the French Republic on the protection of indications of source, appellations of origin and other geographical names, which entered into force on 10 October 1975 (RS 0.232.111.193.49).

15. Does your national legislation provide for recognition and protection of geographical indications or appellations of origin of foreign countries?

The protection of indications without registration under the LPM applies to geographical indications of foreign countries in the same way as it does to those of Switzerland. Registration as a PAO or PGI, or the registration of a geographical mark under Article 27a of the LPM, is possible for geographical indications of both foreign countries and Switzerland. Switzerland has also concluded bilateral and multilateral agreements on the protection of indications of source, appellations of origin and geographical indications (see reply to question 52 below).

16. Is there any specific prohibition in the legislation/regulations/rules/procedures covering geographical indications not protected in the country of origin? If so, please specify the relevant statutory provision.

A sign that is not recognized as a geographical indication by a protection title in its country of origin still benefits from protection as an indication of source under the LPM, without registration. Article 48.5 of the LPM provides that a foreign indication of source is correct where the statutory requirements of the country concerned are met. Geographical names or signs that are not considered by the relevant public to indicate the source of products or services are excluded (Article 47.2 of the LPM), and any possible misleading of consumers in Switzerland remains reserved (Article 48.5 of the LPM).

However, while obtaining a protection title (a PAO, a PGI or a geographical mark) requires proof that the geographical indication is recognized as such in its country of origin, there is no requirement for

the geographical indication in question to be recognized under the same protection instrument. The withdrawal of the protection of a geographical indication in its country of origin constitutes grounds for the *ex officio* cancellation of its registration as a PAO or PGI in Switzerland, under Article 15.1(c) of the Ordinance on PAOs and PGIs, Article 13.1(c) of the Ordinance on Non-Agricultural PAOs and PGIs or Article 35(d) of the LPM with regard to geographical marks, in accordance with Article 24.9 of the TRIPS Agreement.

C. PROCEDURE FOR RECOGNITION

17. With respect to any formal system for recognition of geographical indications, must the applicant be a governmental organization or can a private entity own the rights to a geographical indication?

Applicants seeking the formal recognition of a geographical indication are generally private entities representing the beneficiaries of the geographical indication.

Agricultural PAOs and PGIs (Article 5 of the Ordinance on PAOs and PGIs): the applicant must be a group (made up of producers and/or processors and representative of the product).

For agricultural products and processed agricultural products, a group is deemed to be representative where:

- a. its members produce, process or refine at least half the volume of the product;
- b. at least 60% of the producers, 60% of the processors and 60% of the refiners of the product are members; and
- c. it is shown that the group operates according to democratic principles.

For forestry products and processed forestry products, a group is deemed to be representative where:

- a. its members produce, process or refine at least half the volume of the product;
- b. its members represent at least 60% of the forested area and 60% of the processors; and
- c. it is shown that the group operates according to democratic principles.

For an appellation of origin, the group must include producers from each stage of production and specifically for each product:

- a. those that produce the raw materials;
- b. those that process the product;
- c. those that refine it.

Non-agricultural PAOs and PGIs (Article 4 of the Ordinance on Non-Agricultural PAOs and PGIs): the applicant must be a private group (made up of producers and/or processors and representative of the product). For foreign names, the registration application may also be filed by the competent authority of the country of origin, on behalf of the beneficiaries.

For an appellation of origin, the group is deemed to be representative where:

- a. the production of its members amounts to at least half of the total production of the product;
- b. its members represent at least 60% of the producers involved in each stage of production.

For a geographical indication, the group is deemed to be representative where:

- a. the production of its members amounts to at least half of the total production of the product;
- b. its members represent at least 60% of the producers that place the end product on the market.

A person may be regarded as a group where the following conditions are met:

- a. it is the only producer willing to file an application for registration;

- b. the geographical area described in the application for registration has characteristics that differ significantly from those of neighbouring geographical areas or the characteristics of the product differ from those of products produced in neighbouring geographical areas.

Appellations of origin for Swiss wines: the definition and protection of GIs are based on federal and cantonal legislation, without any registration procedure; this renders the question irrelevant, as there are not, formally, any applicants.

Federal Council ordinance under Article 50 of the LPM: the request is generally raised by an economic sector.

Geographical marks under Article 27a et seq. of the LPM: for a mark based on a PAO or PGI, the applicant must be the representative group of beneficiaries of the PAO or PGI; for a mark based on an appellation of origin for wine, the applicant must be the Swiss canton concerned, the foreign authority responsible for the regulation of wine appellations, or the group that has obtained the protection of a foreign wine appellation; for a mark based on a Federal Council ordinance under Article 50 of the LPM or an equivalent foreign regulation, the applicant must be the umbrella organization of the economic sector concerned.

18. What are the competent authorities where the protection of a geographical indication can be obtained?

PAOs and PGIs for agricultural products (other than wine): the Federal Office for Agriculture (OFAG) is the competent authority for examining applications and for registration.

PAOs and PGIs for non-agricultural products: the Swiss Federal Institute of Intellectual Property (IPI) is the competent authority for examining applications and for registration.

Geographical marks: the IPI is competent for examining applications and for registration.

Swiss wine GIs: in their legislation, the cantons define the use of appellations of origin and local wines with a specific traditional denomination on the understanding that the federal provisions of the LAgr and the Ordinance on Wine are also respected (see reply 8.3 to question 8 above).

Federal Council ordinance under Article 50 of the LPM: the application is addressed to the Federal Council.

19. Do the procedures which lead to the recognition of a geographical indication take place *ex officio* or must they be based on the initiative of an entity or person?

PAOs and PGIs (other than wine): the procedures that lead to the recognition of a geographical indication must be initiated by a group that is representative of the producers of the product concerned or, in certain cases, by the competent authority of the country of origin on behalf of the beneficiaries (see reply to question 17 above).

Swiss wine GIs: the cantons regulate the wine GIs pertaining to their territory through cantonal legislation. As a rule, the cantonal wine sector is represented by a professional association that enters into dialogue with the cantonal authorities to express the demands of producers and defend their interests.

Geographical marks: under Article 27b of the LPM, applications for the registration of a geographical mark may be filed, according to the nature of the product and the protection title of the geographical indication or indication of source concerned, by the representative group for the PAO or PGI, the Swiss canton protecting an appellation of origin for wine, the foreign authority responsible for the regulation of wine appellations, the group that has obtained the protection of a foreign wine appellation, or the umbrella organization of an economic sector.

Federal Council ordinance under Article 50 of the LPM: while requests are generally raised by economic sectors, the Federal Council may also take the initiative and issue an ordinance of this type.

Geographical indications protected without registration as indications of source under Articles 47 et seq. of the LPM: a court's recognition of the rights to an indication of source may result from an action brought by any person demonstrating a legal interest in establishing their right, by any person suffering or at risk of suffering an infringement of their right to an indication of source, by trade and business associations with rules and regulations authorizing them to protect the economic interests of their members, by organizations of national or regional importance with a statutory duty to protect consumers, by the IPI against the unlawful use of indications such as "Switzerland", "Swiss" or any other symbol or indication referring to the geographical territory of the Swiss Confederation, or by the canton concerned against the unlawful use of its name or any other symbol or indication referring to its geographical territory (Articles 52, 55 and 56 of the LPM).

20. What, if any, fees are involved in the application and maintenance of rights in a geographical indication?

Agricultural PAOs and PGIs: OFAG does not charge any fees for examining the registration application or for actual registration. The same applies for applications to modify the specification of a registered PAO or PGI. Should any objection be raised, the costs of the procedure are borne by the losing party. Since the registration is valid for an unlimited duration, there is no fee for maintaining rights to a PAO or PGI.

Swiss wine GIs: these are defined directly by federal and cantonal legislation; no fees are payable.

Non-agricultural PAOs and PGIs: a fee of CHF 4,000 is payable for a registration application. A fee of CHF 2,000 is charged for an objection to a registration application, while an application to modify the specification of a registered PAO or PGI incurs a fee of CHF 800. Since the registration is valid for an unlimited duration, there is no fee for maintaining rights to a PAO or PGI.

Geographical marks: the filing fee is CHF 550, a surcharge of CHF 100 is applied for an additional class, and a fee of CHF 800 is charged for an objection. The registration of a geographical mark is valid for ten years and renewable for the same amount of time upon payment of a fee of CHF 700.

21. If criteria must be set out in an application for recognition of a geographical indication, are those criteria purely geographic in nature?

The criteria set forth in the definitions in the reply to question 8, and the information provided in reply to questions 10 and 17 above, relate to the geographical origin of the product.

22. What other criteria, if any, must be set out in an application for recognition of a geographical indication?

Agricultural PAOs or PGIs: the required and optional content of the specification is set out in Article 7 of the Ordinance on PAOs and PGIs.

The specification must include the following information:

- a. the name of the product, including the appellation of origin or geographical indication;
- b. a definition of the geographical area;
- c. a description of the product including, in particular, its raw materials and principal physical, chemical, microbiological and organoleptic characteristics; for forestry products and processed forestry products, a description of the tree species and physical or other intrinsic characteristics;
- d. a description of the method of obtaining the product;
- e. the designation of one or more certification bodies, and the minimum control requirements.

The specification may also include:

- a. specific labelling details;
- b. a description of the product's distinctive form, if any;
- c. information concerning packaging, where the applicant group can prove that the product must be packaged in the defined geographical area in order to safeguard the quality of the product and ensure traceability or control.

Non-agricultural PAOs and PGIs: the required and optional content of the specification is set out in Article 6 of the Ordinance on Non-Agricultural PAOs and PGIs.

The specification must include the following information:

- a. the name or names and the registration category (appellation of origin or geographical indication);
- b. a definition of the product's geographical area;
- c. a definition of the stages of production, where the application concerns an appellation of origin;
- d. a description of the product including, where appropriate, its raw materials and main sensorial, physical, chemical and microbiological characteristics;
- e. a description of the method of obtaining the product;
- f. the designation of one or more certification bodies or, for foreign names, the designation of one or more authorities or private control bodies responsible for ensuring compliance with the specification.

The specification may also include:

- a. criteria for evaluating the quality of the end product;
- b. a description of the product's distinctive form;
- c. specific details regarding labelling or packaging;
- d. information concerning packaging, where the group can prove that the product must be packaged in the defined geographical area in order to safeguard the quality of the product and ensure traceability or control.

23. What information must be supplied in an application for rights in a geographical indication?

See replies to questions 10 and 22 above.

24. Must the goods or services with respect to which a geographical indication is claimed be set out?

Yes, a registration application for a PAO or PGI must include a very precise description of the product benefiting from the PAO or PGI (see replies to questions 10 and 22 above).

25. What mechanisms are provided to oppose the recognition of a geographical indication? How is an investigation conducted after such a complaint?

Where a registration application for a PAO or a PGI is approved by the authority in charge of the register concerned (OFAG or the IPI), it is duly published. The publication of the application opens a three-month period during which any objections may be addressed, in writing, to the authority in charge of the register concerned.

Registration may be opposed on the following grounds: the name does not satisfy the conditions set out in the relevant legislation, particularly where the name is generic; the group is not representative; or the proposed registration would jeopardize an entirely or partly homonymous mark or name that has been in use for a long time (Article 10 of the Ordinance on PAOs and PGIs, and Article 9 of the Ordinance on Non-Agricultural PAOs and PGIs).

The authority in charge of the register concerned decides whether or not an objection is valid (Article 11 of the Ordinance on PAOs and PGIs, and Article 9 of the Ordinance on Non-Agricultural PAOs and PGIs).

An appeal may be lodged against this authority's decision with the Federal Administrative Tribunal and, as a last resort, with the Federal Tribunal.

26. Who can oppose the recognition of a geographical indication?

Agricultural PAOs and PGIs: the registration of a PAO or PGI may be opposed by anyone that can show they have a legitimate interest; where the name concerned is a Swiss name, trans-border

name or foreign name entirely or partly homonymous with a cantonal geographical entity, the cantons may also oppose the registration.

Non-agricultural PAOs and PGIs: the registration of a PAO or PGI may be opposed by any party within the meaning of the Federal Law on Administrative Procedure of 20 December 1968; where the name concerned is a Swiss name, trans-border name or foreign name entirely or partly homonymous with a cantonal geographical entity or a traditional name used in Switzerland, the cantons may also oppose the registration.

27. If your national legislation provides for recognition and protection of geographical indications or appellations of origin of foreign countries, what is the procedure that has to be followed in order to obtain such recognition and consequent protection?

See replies to questions 15 above and 52 below.

D. MAINTENANCE

28. How long does recognition for a geographical indication continue?

The protection provided for a geographical indication is, by definition and under Swiss law, of unlimited duration.

For PAOs and PGIs, it is expressly stated that, once registered, appellations of origin and geographical indications cannot become generic (Article 16.3 of the LAgr and Article 50a.4 of the LPM).

In the context of the LPM, it is protected, as an indication of source, against any incorrect use, for as long as the relevant public consider it a reference to the source of products or services (Article 47.2 of the LPM).

Where the geographical indication is registered as a geographical mark, the protection is valid for ten years and renewable for further ten-year periods upon payment of a fee (Article 10 of the LPM).

29. If recognition of a geographical indication must be renewed or reaffirmed, what information must be provided in order to effect such a renewal or reaffirmation? Specify any fees involved in renewal or reaffirmation.

See replies to questions 20 and 28 above.

30. Must a geographical indication be used in order to maintain rights? If so, how is such use determined?

No, Swiss law does not include any usage requirement for the protection of GIs that are unregistered but nevertheless protected as indications of source under Article 47 et seq. of the LPM, or for the protection of GIs registered as PAOs or PGIs, recognized as appellations of origin for wine or benefiting from a Federal Council ordinance under Article 50 of the LPM. Geographical marks are excluded from the provisions concerning the use of marks and, in particular, the consequences of the non-use of marks (Article 27e.3 of the LPM).

A geographical name not registered as a geographical indication may become generic, but only the courts can establish this. In accordance with the regular practice of the courts, anyone alleging that an indication of source has become a generic name must provide satisfactory proof.

31. Is there a specified limit for non-use before rights in a geographical indication cease and, if so, what is that limit?

See reply to question 30 above.

32. Who monitors the use of geographical indications to determine if the criteria identified in the application continue to be met?

Agricultural PAOs and PGIs: the use of appellations of origin and geographical indications is monitored by an accredited certification body that meets the requirements set forth under Articles 18 to 20 of the Ordinance on PAOs and PGIs, under the supervision of OFAG. The duties of the certification bodies are set out in the Ordinance of the Federal Department of Economic Affairs, Education and Research (DEFR) on the Minimum Control Requirements for Protected Appellations of Origin and Geographical Indications. In the case of food products, cantonal consumer protection bodies can also take administrative measures where the use of PAOs or PGIs is violated on the market. OFAG is the competent authority for other products.

Non-agricultural PAOs and PGIs: the use of Swiss appellations of origin and geographical indications is monitored by an accredited certification body that meets the requirements set forth under Article 15 of the Ordinance on Non-Agricultural PAOs and PGIs, under the surveillance of the IPI. The duties of certification bodies are set out in Article 16 of that ordinance. Compliance with the specification of a foreign PAO or PGI must be verified before products are placed on the market, in accordance with the regulations of the country concerned, by one or more private control bodies or by one or more authorities designated by the country of origin (Article 18 of the Ordinance on Non-Agricultural PAOs and PGIs).

Swiss wine appellations: the cantons are responsible for monitoring the production requirements and production volume for grapes used in wine production, in accordance with Articles 28 to 31 of the Ordinance on Wine. Trade in wine is monitored by a control body designated by the Confederation or, for producers that vinify their own grape production only, by a control body that may be designated by the cantons (Articles 33 to 41 of the Ordinance on Wine).

33. If a government entity is responsible for monitoring the use of geographical indications, what are its procedures for doing so?

See reply to question 32 above.

34. Are there means by which interested parties may request termination of a geographical indication based on non-use or failure to maintain the criteria identified in the application? Describe the procedure.

PAOs and PGIs: pursuant to Article 15 of the Ordinance on PAOs and PGIs or Article 13 of the Ordinance on Non-Agricultural PAOs and PGIs, the authority in charge of the register concerned may cancel the registration of a protected name following consultation with the federal and cantonal authorities and the parties:

- (a) on request, where the protected name is no longer used or where all users and the relevant cantons are no longer interested in maintaining the registration of the protected name;
- (b) *ex officio*, if it is established that compliance with the specification for the protected name is no longer ensured for good reason;
- (c) *ex officio*, for a foreign name, where it is no longer protected in its country of origin.

Geographical marks: pursuant to Article 35d of the LPM, the IPI may cancel the registration of a geographical mark where the protected appellation of origin or geographical indication on which the geographical mark is based is cancelled.

Geographical indications for Swiss wine: no cancellation procedure is provided for under federal or cantonal legislation, although changes in legislation may lead to the modification of the list of recognized geographical indications.

35. Do the procedures which lead to forfeiture of a geographical indication take place *ex officio* or must they be based on the initiative of an entity or person?

See reply to question 34 above.

E. SCOPE OF RIGHTS AND USE

36. May anyone who meets the criteria submitted to obtain recognition of a geographical indication use that geographical indication after recognition is given or must additional criteria or procedures be followed by that party before use is permitted?

PAOs and PGIs: anyone placing products on the market that meets the criteria set forth in the specification may use the protected appellation of origin or geographical indication. For each producer, compliance with the criteria set forth in the specification must be confirmed by a certification body or, for foreign non-agricultural PAOs or PGIs, by one or more private control bodies or one or more authorities designated by the country of origin. The use of a PAO or PGI is conditional only upon the certification of products, including traceability marks.

Swiss wine GIs: anyone meeting the criteria established under federal and cantonal legislation may use the appellation of origin or local wine name.

Geographical marks: under Article 27d.1 of the LPM, a geographical mark may be used by anyone meeting the requirements set forth in the regulations governing the use of the mark. Furthermore, under Article 27c.2 of the LPM, the regulations governing the use of the mark may not provide for remuneration for its use.

GIs protected without registration under Articles 47 et seq. of the LPM: anyone meeting the requirements set forth in the LPM may use the GI without any authorization or control procedure. Monitoring of compliance with the requirements applicable to indications of source and any additional requirements under Article 48.2 of the LPM may be carried out by professional associations or groups.

37. Who makes the determination regarding use of a geographical indication by particular parties, the entity responsible for the recognition or the entity that obtained the recognition?

See replies to questions 32 and 36 above.

38. Are there fees involved in receiving authorization to use a particular geographical indication and, if so, what are those fees and how are they established?

No, under Swiss law there are no fees involved in receiving authorization to use a particular geographical indication. There may, however, be indirect fees relating to the checks or certification required.

GIs protected without registration under Articles 47 et seq. of the LPM: the GI may be used by anyone meeting the requirements specified in the LPM, without any authorization or control procedure.

PAOs and PGIs: the certification requirement (or, for foreign non-agricultural PAOs and PGIs, the monitoring by private bodies or competent authorities) involves certain costs, payable in accordance with private contracts between control and certification bodies, producers and processors and, where appropriate, inter-professional associations.

Swiss wine GIs: as a rule, fees paid by cellar owners and traders relate to the monitoring of trade in wine (wine making and trading), regardless of the use of geographical indications. In certain cantons, a fee is required to cover the costs associated with organizing the organoleptic examination that is required before an appellation of origin may be used.

39. If there is a dispute regarding use of a geographical indication by a particular party, what procedures are followed to resolve it?

See replies to question 47 et seq. below.

40. Must individual authorized users of a geographical indication use that geographical indication continually to retain their right to use it and, if so, how is their use determined and how long will disuse be permitted?

See replies to questions 28, 29, 30 and 34 above.

41. If there is a dispute over continuity of use by a particular party, how is it resolved?

The question is not relevant in the context of Swiss law. See replies to questions 28, 29, 30 and 34 above.

42. Does the regime for protection of geographical indications allow geographical indications to be licensed and, if so, what conditions are imposed on such licences? If such conditions are not met, what is the effect on the geographical indication?

Licensing is not authorized for geographical indications recognized by a protection title, whether PAOs and PGIs, Swiss wine GIs or an ordinance under Article 50 of the LPM, since the concept of licensing runs counter to the very nature of a geographical indication. Furthermore, under Article 27e.1 of the LPM, a geographical mark may not be transferred or licensed.

43. How is "grandfathered use" of a geographical indication, under Article 24.4 of the TRIPS Agreement, applied in your country?

The grandfathered use of a GI recognized as such, or for which registration has been requested, is regulated by various provisions that are not specific to GIs for wines and spirits.

First, grandfathered uses for identical or similar products that do not correspond to the requirements of the application for the registration of a PAO or PGI constitute grounds for objecting to the registration of the PAO or PGI. Such an objection may lead to the registration application being modified to include the grandfathered uses in question, possibly with a transitional period, to the registration application being rejected, or to the objection itself being rejected.

Where the registration of the PAO or PGI is approved, the grandfathered uses of the name concerned benefit, for identical or similar products, from a transitional period of two years for production and three years for marketing as of the date of registration of the PAO or PGI (Article 17a of the Ordinance on PAOs and PGIs, and Article 21 of the Ordinance on Non-Agricultural PAOs and PGIs).

The use of a name registered as a PAO or PGI for products that are not identical or similar or for services is regulated, on the one hand, by the general provisions on the protection of indications of source, under which such use must correspond to the source of the products or services, and, on the other, by the provisions prohibiting the commercial use of a name protected as a PAO or PGI for a non-comparable product, where such use relies on the reputation of the protected name (Article 17.1(b) of the Ordinance on PAOs and PGIs, and Article 19.1(b) of the Ordinance on Non-Agricultural PAOs and PGIs).

Ordinance under Article 50 of the LPM: grandfathered uses may be invoked in the context of consultation procedures prior to the adoption of the ordinance and may lead to the ordinance being modified to include the grandfathered uses in question, possibly with a transitional period, to the ordinance being rejected, or to the objections being rejected.

F. RELATIONSHIP TO TRADEMARKS

44. What steps are taken to ensure that, in recognizing a geographical indication, the obligations of Article 16.1 of the TRIPS Agreement are not nullified and impaired?

In general, given that geographical indications describe the geographical source of a product, they are treated as signs in the public domain. Accordingly, as a general rule, they cannot be monopolized by a single enterprise.

Marks: the general principle described above applies. Unless they have established themselves as marks for the products or services concerned, signs in the public domain are excluded from protection (absolute reason for exclusion, Article 2(a) of the LPM). The same applies where the sign is liable to mislead or is contrary to the law in force (Article 2(c) and (d) of the LPM).

PAOs and PGIs: the holder of a prior mark may object to the proposed registration of a PAO or PGI where it would jeopardize his entirely or partly homonymous mark (Article 10.3(d) of the Ordinance

on PAOs and PGIs, and Article 9.3(c) of the Ordinance on Non-Agricultural PAOs and PGIs). Where the holder's objection is accepted, the appellation of origin or geographical indication will not be registered. Where the objection is rejected, the PAO or PGI will be registered and the holder of the mark may continue to use it (simultaneously with the appellation of origin or geographical indication) provided, however, that he meets the criteria laid down for the use of the appellation of origin or geographical indication. This obligation does not apply to the use of marks that are identical or similar to a registered appellation of origin or geographical indication and which have been filed or registered in good faith or acquired through use in good faith before 1 January 1996, or before the name of the registered geographical indication was protected in the country of origin, where there are no grounds for invalidity or revocation of the mark as provided for by the law (Articles 16.6 of the LAgr and Article 50a.5 of the LPM).

45. What steps are taken to ensure that, in recognizing a geographical indication, the obligations of Articles 16.2 and 16.3 of the TRIPS Agreement are not nullified and impaired?

See reply to question 44 above.

46. What procedures are foreseen in case of a conflict of a geographical indication with a trademark?

See reply to question 44 above.

G. ENFORCEMENT

47. How are rights in the geographical indication enforced? Are provisions available under unfair competition law? Trademark law? Other laws? Provide citations to the laws and, if they have not been notified under Article 63.2 of the TRIPS Agreement, please provide copies.

Protection without registration under the LPM and non-agricultural PAOS and PGIs:

The possible remedies in civil law are as follows:

- declaratory action to establish a right or legal relationship (Article 52);
- actions to enforce performance (i.e. prohibition of an infringement or threat of infringement of a geographical indication), order to desist, order to reveal the source of objects illegally bearing an indication of source (Article 55);
- action for damages, etc. (Article 55);
- confiscation, destruction, etc. (Article 57);
- precautionary provisional measures (Article 59);
- publication of judgement (Article 60).

Furthermore, Article 51a provides that the user of an indication of source must prove that the indication is correct.

The criminal penalties (Article 64) are a custodial sentence not exceeding one year or a monetary penalty for whoever intentionally uses an inaccurate indication of source or a designation likely to be confused with an inaccurate designation, or creates a risk of deception by using a name, address or mark in connection with products or services from another source. Where the offender is acting for commercial gain, the penalty is a custodial sentence not exceeding five years or a monetary penalty. The custodial sentence is combined with a monetary penalty.

Provision is also made for border measures:

- The Federal Customs Administration may notify the beneficiary of an indication of source or a trade or business association with the capacity to institute legal proceedings when there is reason to suspect the imminent importation or exportation of products to which the indication of source has been illegally affixed (Article 70 of the LPM). The beneficiary of the indication of source or the trade or business association (hereinafter, the applicant) may request that the goods be detained.

- The goods may be detained for a maximum of ten working days. In exceptional circumstances, the detention period may be extended by a maximum of ten working days. Anyone that improperly requests the detention of goods must make good the injury caused where the provisional measures are unjustified or where they have not been ordered (Articles 70 to 72b of the LPM and Articles 54 to 57 of the Ordinance on the Protection of Marks and Indications of Source).
- The applicant may request the destruction of the goods, which is carried out at the expense of the applicant and on the condition that the declarant, holder or owner of the goods has not objected to the destruction (Article 72c to 72g of the LPM).

Agricultural PAOs and PGIs and wine GIs:

Criminal provisions: anyone that intentionally makes unlawful use of an appellation of origin or geographical indication protected under Article 16 (agricultural products, processed agricultural products, forestry products and processed forestry products) or of an appellation of origin or indication of source covered by Article 63 (wine) will, upon complaint, receive a custodial sentence not exceeding one year or a monetary penalty. Where the offender is acting for commercial gain, he will be prosecuted *ex officio*. The penalty is a custodial sentence not exceeding five years or a monetary penalty (Article 172 of the LAg).

For civil proceedings, see the remedies provided by the LPM.

Law on Unfair Competition (LCD):

Civil provisions: anyone whose goodwill, credit or professional reputation, or business or economic interests in general, are the subject of an act of unfair competition or are threatened therewith may request the judge to prohibit it where imminent, to put an end to it where it still continues, or to declare it illegal where the trouble it has caused persists. In particular, he may request that a rectification be made or that the judgement be communicated to third parties or published. He may also ask for damages (Article 9 of the LCD). Proceedings may also be instituted by customers whose economic interests are threatened or injured by an act of unfair competition. Proceedings may also be initiated by trade or business associations with rules and regulations authorizing them to protect the economic interests of their members, organizations of national or regional importance with a statutory duty to protect consumers, and the Confederation, where it considers such action necessary to protect public interests (Article 10 of the LCD).

Criminal provisions: anyone that intentionally engages in unfair competition (for example, by providing inaccurate or misleading information on his goods or by taking measures liable to give rise to misunderstanding with respect to the goods) will, upon complaint, be liable to a custodial sentence not exceeding three years or a monetary penalty (Article 23 of the LCD).

48. Who has the right to enforce a geographical indication?

Pursuant to Article 52 of the LPM, a declaratory action to establish a right or a legal relationship concerning an indication of source may be brought by anyone demonstrating a legal interest in such a declaration. Pursuant to Article 55 of the LPM, an action for the enforcement of performance (termination or prohibition of an act, etc.) may be brought by anyone suffering or at risk of suffering an infringement of his right to an indication of source. The right to bring a declaratory action or an action for the enforcement of performance in relation to indications of source, is also recognized by Article 56 of the LPM for:

- trade and business associations with rules and regulations authorizing them to protect the economic interests of their members;
- organizations of national or regional importance with a statutory duty to protect consumers;
- the IPI, to the extent that indications such as "Switzerland", "Swiss" or other symbols or indications referring to the geographical territory of the Swiss Confederation are used;
- the canton concerned, to the extent that its name or other symbols or indications referring to its geographical territory are used.

49. What judicial or administrative bodies have jurisdiction over enforcement actions related to geographical indications? Are there fees involved and, if so, what are those fees?

See generally the description given by the Swiss delegation in document IP/N/6/CHE/2¹⁰ (checklist on issues of enforcement).

The judicial bodies (courts) are mainly responsible for proceedings. Prosecution falls to the cantons alone. In all cases, a final cantonal decision may be appealed to the Federal Tribunal.

Cantonal consumer protection bodies may take administrative action in relation to breaches of geographical indication law in the area of food products.

For border measures, see the reply to question 47 above.

For a more detailed description of the judicial system and fees, costs, etc., see document IP/N/6/CHE/2.

50. Must the public be notified of the existence of a geographical indication and, if so, how and how often?

Generally speaking, the protection of indications of source is based on the understanding of the Swiss public, in accordance with Article 47.2 of the LPM.

Regarding GI recognition procedures:

Swiss wine GIs: the public is informed within the framework of the adoption of legislation (consultation procedure and the publication of federal and cantonal laws and regulations). Furthermore, under Article 25 of the Ordinance on Wine, OFAG publishes the Swiss inventory of controlled appellations of origin.

Agricultural PAOs and PGIs: the registration application, where approved, is published together with the main elements of the specification in the *Feuille officielle suisse du commerce* (Swiss official trade gazette). OFAG also notifies the public in a press release. Any objection to the registration may be addressed to OFAG in the three months following the date of this publication (Articles 9 and 10 of the Ordinance on PAOs and PGIs). The registration of the PAO or PGI, once any objections or appeals have been rejected, is also published in the Swiss official trade gazette (Article 12 of the Ordinance on PAOs and PGIs). Anyone may consult the PAO and PGI register and request extracts from it (Article 13.3 of the Ordinance on PAOs and PGIs). The information contained in the register in accordance with Article 13.2 of the Ordinance on PAOs and PGIs is published and made freely available on the OFAG website.

Non-agricultural PAOs and PGIs: once a registration application has been received, the IPI will publish the following information: the name or names concerned, the name and address of the applicant group or of the competent authority for the country of origin and, where appropriate, of its representative, the registration category requested (PAO or PGI), and the date when the application was filed (Article 8.3(a) of the Ordinance on Non-Agricultural PAOs and PGIs). Where the application is approved, the IPI will publish the above-mentioned information and the specification (Article 8.3(b) of the Ordinance on Non-Agricultural PAOs and PGIs). Any objection to the registration may be addressed to the IPI in the three months following the date of this publication (Article 9 of the Ordinance on Non-Agricultural PAOs and PGIs). The IPI will enter the name in the register of non-agricultural PAOs and PGIs once any objections or appeals have been rejected. Anyone may consult the PAO and PGI register and request extracts from it (Article 11.7 of the Ordinance on Non-Agricultural PAOs and PGIs). The information contained in the register in accordance with Article 11.4 of the Ordinance on Non-Agricultural PAOs and PGIs is published and made freely available on the IPI website.

Geographical marks: registration applications and information on procedures are published in the intellectual property protection title database, [swissreg](#).

¹⁰ This document is currently being updated following the entry into force of certain legislative amendments and will be notified shortly.

51. Is unauthorized use of a geographical indication subject to criminal action and, if so, describe the procedures. If the law has not been notified pursuant to Article 63.2 of the TRIPS Agreement, please provide a copy.

Yes, see reply to question 47 above.

H. INTERNATIONAL AGREEMENTS

52. Is your government party to an international, including bilateral or plurilateral, agreement for the notification and/or registration of geographical indications? If so, please name the international agreement and explain the relationship between it and your national legislation.

Bilateral agreements on geographical indications and indications of source:

- Treaty of 7 March 1967 between the Swiss Confederation and the Federal Republic of Germany on the protection of indications of source and other geographical names, entered into force on 30 August 1969 (RS 0.232.111.191.36)
- Treaty of 16 November 1973 between the Swiss Confederation and the Czechoslovak Socialist Republic on the protection of indications of source, appellations of origin and other geographical names, entered into force on 14 January 1976 (RS 0.232.111.197.41)

(N.B. The Treaty has remained in force for the Czech Republic following an exchange of notes on 24 February 1994; the same applies to the Slovak Republic following an exchange of notes on 13 October/25 November 1994.)

- Treaty of 9 April 1974 between the Swiss Confederation and the Spanish State on the protection of indications of source, appellations of origin and similar names, entered into force on 10 March 1976 (RS 0.232.111.193.32)
- Treaty of 14 May 1974 between the Swiss Confederation and the French Republic on the protection of indications of source, appellations of origin and other geographical names, entered into force on 10 October 1975 (RS 0.232.111.193.49)
- Treaty of 16 September 1977 between the Swiss Confederation and the Portuguese Republic on the protection of indications of source, appellations of origin and similar names, entered into force on 14 May 1980 (RS 0.232.111.196.54)
- Treaty of 14 December 1979 between the Swiss Confederation and the Hungarian People's Republic on the protection of indications of source, appellations of origin and other geographical names, entered into force on 14 August 1981 (RS 0.232.111.194.18)
- Agreement of 21 June 1999 between the Swiss Confederation and the European Union on trade in agricultural products: Annex 7 on wine-sector products (entered into force on 1 June 2002), Annex 8 on spirits (entered into force on 1 June 2002), and Annex 12 on the protection of appellations of origin and geographical indications of agricultural products and foodstuffs (entered into force on 1 December 2011) (RS 0.916.026.81)
- Agreement of 29 April 2010 between the Swiss Confederation and the Russian Federation on the protection of geographical indications and appellations of origin, entered into force on 1 September 2011 (RS 0.232.111.196.65)
- Agreement of 23 September 2013 between the Swiss Confederation and Jamaica on the mutual recognition and protection of geographical indications, entered into force on 1 September 2014 (RS 0.232.111.194.58)

53. What other international agreements, if any, have been entered into? What do those agreements provide?

Switzerland is party to the following international conventions:

- Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967) (RS 0.232.04)
- Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (Stockholm Act, 1967) (RS 0.232.111.131)
- Convention of 1 June 1951 on the Use of Appellations of Origin and Denominations of Cheeses (Stresa Convention; RS 0.817.142.1)

2 RESPONSES TO THE QUESTIONS IN DOCUMENT IP/C/13/ADD.1**GENERAL (SECTION A OF DOCUMENT IP/C/13)**

1. Does your country's industrial property law and/or related law prevent the use of geographical indications identifying wines or spirits against products not originating in the place indicated by the geographical indication, 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?

Yes, and this prohibition applies to all products.

Under Article 47.3*bis* of the LPM, indications of source accompanied by expressions such as "kind", "type", "style" or "imitation" must also meet the requirements established for indications of source used without these expressions.

This provision supplements Article 47.3 of the LPM, which most notably prohibits the use of incorrect indications of source or names that may be confused with an incorrect indication of source.

DEFINITIONS AND CRITERIA FOR RECOGNITION (SECTION B OF DOCUMENT IP/C/13)

2. Is there a clear distinction among the terms "geographical indications", "appellations of origin" and "indications of source" in your country's industrial property law and/or related law, or are there any substantive criteria to distinguish these terms?

See reply to question 8 in document IP/C/13.

3. Does your legislation contain criteria for homonymous geographical indications for wines and spirits?

See reply to question 14 in document IP/C/13.

RELATIONSHIP TO TRADEMARKS (SECTION F OF DOCUMENT IP/C/13)

4. Does your country's industrial property law and/or related law provide for the refusal or invalidation of a trademark registration which consists of or contains geographical indications identifying wines or spirits with respect to such wines or spirits not originating in the indicated territory?

See reply to question 44 in document IP/C/13.
