



STANDING COMMITTEE ON GEOGRAPHICAL INDICATIONS QUESTIONNAIRE TO NATIONAL GROUPS

Introduction

- 1) The purpose of this questionnaire is to seek information from AIPPI's National and Regional Groups on developments in their respective countries in relation to geographical indications (**GIs**) and appellations of origin (**AOs**) and on the positions taken with regard to issues that have emerged from AO and GI legislation.
- 2) According to the TRIPs Agreement GIs are “indications which identify a good as originating in the territory of a [Country], or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”. A similar definition is adopted by the WIPO Geneva Act.

Under the WIPO Lisbon Agreement an AO is a “geographical denomination of a country, region or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors”. A similar definition is adopted by the WIPO Geneva Act.

- 3) Therefore, the rationale for protection of AOs and GIs is to protect signs identifying the geographical origin of goods whose characteristics and/or reputation are linked to such origin.
- 4) At a worldwide level, many contrasts and divergences have emerged with regard to protection of AOs and GIs. Some countries have enacted specific legislation on AOs / GIs supporting broad protection (particularly in relation to their local typical products). Other countries, who do not tend to favour strong protection of AOs / GIs regulate them, if at all, within the framework of trademark legislation.
- 5) It is intended that the information obtained by means of this questionnaire will:
 - enable AIPPI to further develop its position on issues relating to GIs and AOs, leading to a further Resolution aimed at harmonisation of national laws relating to GIs and AOs; and
 - thereby assist in the advocacy of AIPPI's position on such issues to national and regional governments and in international forums.

Previous work of AIPPI

- 6) AIPPI's most recent study of issues relating to GIs and AOs was Q191 – "Relationship between trademarks and geographical indications". A Resolution on Q191 was adopted in Gothenburg, Sweden in 2006 (**Gothenburg Resolution**). The Gothenburg Resolution is available at:
<http://aippi.org/wp-content/uploads/committees/191/RS191English.pdf>.

Further information on AOs and GIs, their legal regulation and the debate surrounding them can be found in the Study Guidelines for Q191 available at:
<http://aippi.org/wp-content/uploads/committees/191/WG191English.pdf>

- 7) Other work of AIPPI prior to the Gothenburg Resolution is summarised in the Study Guidelines for Q191,
<http://aippi.org/wp-content/uploads/committees/191/WG191English.pdf>

Discussion

- 8) Set out below is a brief discussion on international legal frameworks for the protection of GIs and AOs, including developments that have taken place since the Gothenburg Resolution.
- 9) At an international level, the two multilateral treaties committing signatory States to protect GIs which have gained the broadest adhesion worldwide are the Paris Convention within the WIPO system and the TRIPs Agreement within the WTO system.
- 10) Article 1(2) of the Paris Convention states that the subject-matter of protection of industrial property is (among other things) "indications of source or appellations of origin". Article 10 of the Convention states that seizures and other remedies "shall apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant".
- 11) Article 22 of TRIPs requires the protection of "geographical indications". GIs are recognised by Article 1(2) of TRIPs as a category of intellectual property. Under the TRIPs Agreement, GIs are protected against uses misleading the public or constituting an act of unfair competition. Additional and stronger protection is only provided for GIs of wines and spirits. Discussions commenced under the Doha mandate on the question of increasing the level of protection of GIs under the TRIPs Agreement appear to have come to a deadlock.
- 12) Within the WIPO system further agreements concerning AOs and GIs have been adopted, generally providing for a high level of protection:
 - a) the Lisbon Agreement of 1958 protects "appellations of origin" against any form of usurpation or imitation, whether or not this usurpation or imitation is misleading for the public. The Lisbon Agreement provides for the establishment of a system for the deposit of "appellations of origin" with the International Bureau operated by

WIPO. Under the Lisbon Agreement, each signatory state is required to protect the appellations of origin registered by another state. A provision is inserted protecting AOs against becoming generic. The list of contracting parties to the Lisbon Agreement can be found at

http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=10

- b) the Geneva Act of the Lisbon Agreement, adopted in 2015, protects both appellations of origin and geographical indications. Protection is given against various types of use, including uses liable to mislead consumers and/or "impair or dilute in an unfair manner, or take unfair advantage of" the reputation of a AO/GI. Further provisions of the Geneva Act protect AOs/GIs against becoming generic and regulate the relationship between AOs/GIs and trademarks. The list of countries that have signed the Geneva Act can be found at http://www.wipo.int/treaties/en/ActResults.jsp?act_id=50.
- 13) Within the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, there are discussions about the proposal by some delegations concerning the protection of GIs in the domain name system. This is particularly with regard to possible modification of the WIPO UDRP in order to "permit complaints to be made concerning registration and use of domain names in violation of the protection of geographical indications".
- 14) Due to the above divergences, the WIPO Agreements have received limited support among WIPO Member States. Only a relatively small number of States have signed them. This debate emerged in particular during the negotiations leading to the adoption of the WIPO Geneva Act. Negotiations were characterized by a clash between countries pushing for a very high level of protection and other countries refuting the content of the Act and even the legitimacy of the negotiations.
- 15) In addition to the protection for GIs and AOs afforded by the international treaties described above, a high level of protection for GIs and AOs relating to agricultural products and foodstuffs is granted in the European Union under EU Regulation 1151/2012 and other regulations pertaining to specific products. EU Regulation 1151/2012 protects "designations of origin" and "geographical indications" against acts which are of a nature to mislead the public and/or to unduly exploit or freeride on the reputation of the GI/AO. The Regulation contains provisions protecting GIs and AOs against becoming generic and in general against a possible loss of rights, as well as regulating relationships between GIs/AOs and trademarks. The EU system is based on registration and EU case law restricts protection of GIs/AOs which are not registered at EU level.

The European Commission is currently investigating the possibility of expanding the protection of GIs and AOs to non-agricultural products.

- 16) Differences and disagreements which have emerged within the international framework regard several key points of legislation on GIs and AOs, such as the way of acquiring rights, the prerequisites for protection, the scope of protection, maintaining protection in the face of supervening circumstances and relationships with other IP rights. The questions below are intended to touch upon these issues.

Name of your National/Regional Group

National Group Sweden

Questions

Your Group is invited to submit a Report addressing the questions below. If your Group considers that the answer to a question has already been given in its report on Question Q191, and that nothing has changed since then, a cross-reference to the specific paragraph in your Group's report on Q191 is sufficient.

In each case please specify whether your answer differs:

- (a) as between GIs and AOs; and
- (b) depending on whether the GI or AO is foreign or domestic.

I. Analysis of current legislation and case law

- 1) Are GIs and/or AOs protected under your Group's current law?

There is no Swedish sui generis law for the protection of AO's and GI's. However, as Sweden is a member of the European Union, the regulation (EU) no 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (henceforth, "the Regulation") is directly applicable in Sweden. The Regulation sets out the main rules for protecting GIs and AOs in Sweden. In addition to the Regulation, AO's and GI's are further protected by EU regulations 110/2008 on the definition, description, presentation labelling and the protection of geographical indications of spirit drinks, 1308/2013 on establishing a common organisation of the markets in agricultural products and 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products.

The Regulation is further amended by the Swedish Act on Control of Protected Designations of Agrarian Products and Foodstuffs (2009:1424), and provisions in the Swedish Marketing Act (2008:486) and the Swedish Trademark Act (2010:1877).

- 2) If yes, please briefly describe the following:

- a) How AOs and GIs are defined and the prerequisites (in particular the type, nature and intensity of link with a territory).

AOs and GIs are defined by the Regulation as follows below.

AOs are referred to as “designation of origin”, and are defined as a name which identifies a product:

- (a) originating in a specific place, region or, in exceptional cases, a country;
- (b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and
- (c) the production steps of which all take place in the defined geographical area.

(Article 5.1 of the Regulation)

GIs are referred to as “geographical indication”, and are defined as a name which identifies a product:

- (a) originating in a specific place, region or country;
- (b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and
- (c) at least one of the production steps of which take place in the defined geographical area.

(Article 5.2 of the Regulation)

Article 7 of the Regulation indicates the minimum requirements with which a protected designation of origin or a protected geographical indication specification should comply. These include inter alia:

- a description of the product, including the raw materials, if appropriate, as well as the principal physical, chemical, microbiological or organoleptic characteristics of the product;
- evidence that the product originates in the defined geographical area referred to above;
- A description of the method of making the product, and if applicable, information about the authentic and unvarying local methods, or information about the packaging of the product;
- Details establishing a link between the quality or the characteristics of the product, or between the given quality, the reputation or other characteristic of the product and the geographical origin, and the geographical environment it comes from.

- b) Whether that protection is provided by sui generis laws; solely as aspects of other laws, such as by registration as collective or certification marks; or by other (and if so, what) means.

As mentioned above, there is no Swedish sui generis law for the protection of AOs and GIs. Such a protection is offered by the Regulation and the EU regulations listed above.

In addition, under the Swedish Trademarks Act, marks that serve to designate the geographical origin of goods or services may be registered as collective or certification marks. Further, a trademark will be refused registration if it contains or consists of any sign that is liable to be conceived as a geographical indication for wines or spirits and relates to wines or spirits of a different origin.

- c) If GIs and/or AOs are protected by sui generis laws, whether your Group's laws provide for a system of registration. If so, what are the steps of this procedure including the content of the application and the possibility of opposition by third parties.

The rules on the application and registration procedures are laid down in the Regulation. The rules on application and registration are the same for GIs and AOs but the requirements that must be fulfilled are different.

The Application

Article 8 of the Regulation states that the content of an application for a GI or AO shall include at least the following:

- (a) the name and address of the applicant group and of the authorities or, if available, bodies verifying compliance with the provisions of the product specification;
- (b) the product specification provided for in Article 7;
- (c) a single document setting out the following:
 - (i) the main points of the product specification: the name, a description of the product, including, where appropriate, specific rules concerning packaging and labelling, and a concise definition of the geographical area;
 - (ii) a description of the link between the product and the geographical environment or geographical origin referred to in Article 5(1) or (2), as the case may be, including, where appropriate, the specific elements of the product description or production method justifying the link. An application as referred to in Article 49(5) shall, in addition, include proof that the name of the product is protected in its country of origin.

The application procedure

An application for a AO or GI must first be examined by the national authorities of the Member State concerned. In Sweden, this authority is the National Food Agency

(Sw: Livsmedelsverket, <https://www.livsmedelsverket.se/>).

An application for an AO/GI may only be submitted by groups who work with the products with the name to be registered. In exceptional cases, a single person can submit an application. The person concerned shall be the only producer willing to submit an application and the defined geographical area shall possess characteristics which differ appreciably from those of neighbouring areas, or the characteristics of the product shall be different from those produced in neighbouring areas.

The National Food Agency shall evaluate the application and control that it meets all the requirements of the Regulation. After evaluation, the application is published in order to enable opposition by third parties with a legitimate interest. Oppositions with regard to an AO/GI application are tried against the criteria laid down in article 10.1 of the Regulation.

If the National Food Agency considers that all the requirements of the Regulation are met by an application for registration of an AO/GI it grants the application and registers it with the European Commission. The European Commission shall be informed of incoming oppositions regarding products lawfully marketed under a registered AO/GI for at least five years from the registration date.

When the European Commission has received the application form the national authority, it shall also examine AO/GI applications in order to control that the applications are motivated and meet the requirements of the Regulation. The European Commission's evaluation shall take place within six months. In case of a delay the European Commission must inform the applicant of the reason for the delay.

After the European Commission's evaluation, a summarizing document is published in the Official Journal of the European Union. The summarizing document includes a reference to the published product specification. Third parties with a legitimate interest have a period of three months to submit oppositions with a claim that the application violates the requirements of The Regulation.

The commission then has a period of two months to urge the applicant to consult with opposing third parties. The commission may extend the period of consultation for up to three months if the applicant requires extended time.

All acts of registration and rejection are published in the Official Journal of the European Union.

- 3) If your country does not protect GIs and/or AOs, was this a deliberate decision and, if so, why?

Sweden protects GIs and AOs.

- 4) What are the grounds of invalidity/loss of rights for GIs and/or AOs under your Group's law (e.g. becoming generic, lack of use, not paying fees) and where can such be invoked (which court, office etc.)? Please specify the applicable test, how such is

proven (e.g. consumer surveys, expert advice, dictionaries, etc.) and who bears the burden of proof.

Background:

Currently, there is no specific national legislation on geographical indications and appellations of origins in Sweden (SOU 2016:79 p. 260). However, there are EU regulations in force that could protect geographical indications and appellations of origins as has been mentioned above. Also there are a few Commission Regulations that lay down certain details for the implementation of the Council Regulations (e.g. Commission Regulation (EC) No 607/2009, which provides information on grounds for loss of rights to a GI/AO of 14 July 2009).

Under Swedish national law, it is possible to protect a name that represents a product from a geographical area or with a certain origin as a collective mark/trademark (Kollektiv-, garanti- och kontrollmärken). The information set out below in this question 4 relates only to such Swedish registered collective mark/trademark.

Grounds of invalidity/loss of rights

Several grounds may be invoked, many the same as for “ordinary” trademarks: (1) If applicable fees for the registration, and the prolongation, are not paid, the registration will expire. (2) If the GI/AO becomes generic, it can be cancelled. (3) The registration can be invalidated if it contradicts morality, public order or law. (4) The registration can be invalidated if it aims to mislead the public with regards to the product's nature, quality, origin or another ground and this is a result of the use of the holder of the registration or the use by someone who has been permitted by the holder of the registration to use the GI/AO. (5) If the GI/AO is not used for five years in a row in Sweden, it can be invalidated. (6) If the conditions for the use of the GI/AO have been changed and the holder of the registration has not informed the authorities about the new conditions, it can be invalidated. (7) If the GI/AO has been used in violation of the conditions for the use and the holder of the registration has not taken reasonable measures to prevent such use, it can be invalidated, (Swedish Trademark Act 3:1-3:3 §§).

Where such grounds may be invoked

Grounds for invalidity can be invoked either with the Patent and Market Court or the Patent and Registration Office, (Swedish Trademark Act 3:5 §).

The applicable test, how such is proven and the burden of proof

- The entity or person that claims that a mark has become generic has the burden of proof. Dictionaries, books, newspapers, consumer surveys could be used to support such claim.
- The entity or person that claims that a mark contradicts morality or public order has to prove such claim.
- . The entity or person that claims that a mark has become misleading has the burden of proof and especially consumer surveys could be used to support such claim.
- Regarding the use of the GI/AO, the holder of the registration must prove a real use of the mark. It must be proved that the mark has been used in connection with the promotion, advertising or sale of the products. For example, leaflets, print screens of webpages or packages can be used as evidence.

5) What is the scope of protection of GIs/AOs under your Group's current law?

Registered GIs/AOs are protected against the following according to art. 13 of EU regulations No. 1151/2012:

- any direct or indirect commercial use of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name, including when those products are used as an ingredient;
- any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation' or similar, including when those products are used as an ingredient;
- any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product that is used on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- any other practice liable to mislead the consumer as to the true origin of the product

Where a protected designation of origin or a protected geographical indication contains within it the name of a product which is considered to be generic, the use of that generic name shall not be considered to be contrary to:

- any direct or indirect commercial use of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name, including when those products are used as an ingredient;
- any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation' or similar, including when those products are used as an ingredient;

Furthermore the limitation of the scope of protection of GIs/AOs is explicitly provided in 1:11 § of the Swedish Trademark Act, i.e. *“Exclusive rights in a collective, guarantee or a control mark do not prevent a third party from using in the course of trade signs or indications indicating geographical origin, provided that the use accords with honest practices in industrial or commercial matters. Such exclusive rights do not prevent a third party entitled to use a geographical name to do so.”*

6) Against what kind of conduct are GIs/AOs protected? For example, against use misleading consumers, parasitism and free riding.

GIs/AOs are protected from use of identical or similar trademarks, against use that risks misleading consumers, against parasitism and free riding in accordance with marketing and trademark rules.

- 7) Who has legal standing to protect a GI/AO. For example, individual producers, consortiums and associations, public bodies.

In accordance with the EU regulations referred to above (i.a. questions 4 and 5), only a group of producers (or groups who work with the products with the name to be registered) is afforded the right to register GI/AO (albeit, a single natural or legal person may occasionally be treated as a group in accordance with applicable EU regulations). Producers within the relevant geographic area, who are not part of the original applicant group may, nevertheless, use the GI/AO if they can show that their product fully conforms to the registered specification.

- 8) What remedies are available in the case of violation of rights in a GI/AO?

In case of infringement of a GI/AO, the holder of the GI/AO has the right to (i) demand that the infringer shall be prohibited, against the penalty of a fine, to continue the infringement (8:3 § Swedish Trademark Act), (ii) reasonable compensation from the infringer for the use of the GI/AO (8:4 § Swedish Trademark Act), (iii) claim damages from the infringer (8:4 § Swedish Trademark Act), (iv) request that infringing articles are recalled, destroyed or subjected to other corrective measures (8:7 § Swedish Trademark Act) and (v) request that the infringer disseminates information concerning the judicial decision (8:8 § Swedish Trademark Act). The holder can also request information injunction and infringement investigation in accordance with chapter 9 of the Swedish Trademark Act. Additionally, general provisions on judicial procedures apply, such as provisions on requests of precautionary seizure, documentary evidence and views.

Apart from the remedies available to the holder, the Swedish National Food Agency ("Livsmedelsverket", the "SNFA") is authorized to take action for bringing cases of violation of the specification of a product to a cease.

Furthermore, general marketing legislation in Sweden provides protection for GI/AO. For instance, marketing of products (which do not conform to the specifications of a GI/AO) may be prohibited if the marketing gives a false impression of the quality/characteristics of the products by referencing the geographic area protected by the GI/AO (§8 of the Marketing Act). Furthermore, marketing which is contrary to good marketing practice, such as that takes advantage of the reputation of a GI/AO, may be prohibited (§5 of the Marketing Act).

- 9) How does your Group's law regulate the conflict between a GI/AO and a prior trademark? Does the GI/AO or the trademark prevail or do they coexist? Under what conditions?

By tradition, in Sweden conflicts between *trademarks* are to be resolved according to the principle that the first party in time to use a name or figurative mark should have priority. Thus, in Sweden the "first in time, first in right"-rule is applicable to trademarks, i.e. the party that has a prior right in the jurisdiction where the dispute has taken place prevails.

However, being a member of the EU, Sweden is bound by EU legislation where – in terms of conflicts between GIs/AOs and trademarks – the principle “first in time, first in right” is not automatically applied. In EU, as a general rule, a trademark cannot be registered if a corresponding GI/AO name has already been granted protection. On the contrary, a GI/AO can be registered and co-exists with an existing trademark if all the GI/AO requirements are met. Hence, there are cases where EU legislation provides for co-existence between a *prior trademark and a later GI/AO* (but not vice versa) where the conflicting trademark was applied for, registered or used in good faith before the date of protection of GI/AO in the country of origin. For example, EU Regulation no 110/2008 provides for co-existence between a prior trademark and a later GI/AO under certain circumstances, see Article 23 in said regulation. However, Article 23 also stresses that “a geographical indication shall not be registered where, in the light of a trade mark’s reputation and renown and the length of time it has been used in the Community, registration is liable to mislead the consumer as to the true identity of the product.” Thus, in order to avoid misleading consumers as to the true identity of a product, a GI/AO cannot be registered if the prior trademark enjoys reputation and is renowned and long used.

Consequently, in terms of the relationship between GIs/AOs and trademarks, the main starting point in the EU (and thus also in Sweden) is that consumers are not to be misled. Thus, any conflicts between GIs/AOs and prior trademarks shall be resolved in a manner that mitigates this risk.

- 10) Is there any specific provision or practice concerning the inclusion of a GI/AO in a domain name?

To our knowledge, there is no specific provision concerning the inclusion of a GI/AO in a domain name.

The Internet Foundation in Sweden (the “IIS”) is an independent organization for the benefit of the public that promotes the positive development of the internet in Sweden. IIS is responsible for the internet’s top-level Swedish domain.se as well as the top-level domain.nu, including the registration of domain names, and the administration and technical maintenance of the national domain-name registry.

According to IIS, the “first come, first serve” principle applies when allocating .se and .nu domain names, i.e. the first party to apply for an available domain name will acquire title to the domain name with no prior assessment. However, the allocation of a domain name can be appealed retroactively through IIS’s dispute resolution process. According to IIS’s terms and conditions of registration¹, a domain name may be deregistered or transferred to the party requesting dispute resolution proceedings if **(i)** the domain name is identical or similar to GIs/AOs covered by certain EU regulations which are legally binding in Sweden and to which the party requesting dispute resolution can prove its rights, **(ii)** the domain name has been registered or used in bad faith, and **(iii)** the domain holder has no right to or justified interest in the domain name.

¹ https://www.iis.se/docs/Registreringsvillkor_eng.pdf

- 11) Is there anybody that administers GIs/AOs in your country and/or is responsible for the verification of compliance of goods bearing a GI/AO? Please briefly describe the relevant processes, e.g. the process by which compliance with product specifications is verified before such goods are put on the market and/or the subsequent market controls on such goods?

An application for a GI/AO is filed with the **SNFA**, which checks whether the application is in line with the requirements in the specific EU regulation – for example council regulation (EEC) No 2081/92 – that serves as basis for the application. As part of its examining process, the SNFA publishes the application so that natural and legal persons with legitimate interests are given the opportunity to file an opposition against the registration of the GI/AO. When an opposition is filed, the SNFA assesses and rules on the opposition based on its merits. If the SNFA concludes that the application meets the requirements in the specific EU regulation, the SNFA registers the application with the European Commission (the “**Commission**”) and publishes its decision as well as the specific product specification so that entitled persons are given the opportunity to appeal against the decision. The SNFA shall inform the Commission of any opposition filed in respect of legally sold goods bearing the registered GI/AO during a minimum period of five years.

When the SNFA has registered an application with the Commission, the Commission in turn examines whether the application meets the requirements of the specific product specification and if the GI/AO is generic. The examination by the Commission is usually completed within six months. If the Commission approves the application, it is published in the Official Journal. Entitled persons may, within three months from the date of publication, file an opposition against the registration of the GI/AO. In cases where an opposition is filed, the applicant and the opposing party are given three months to consult on the matter before the Commission makes its final decision.

In addition to the producers of the goods ensuring that the products comply with the specifications, the SNFA also handles the subsequent market controls of goods bearing a GI/AO. In its supervisory role, the SNFA has a legal right to inter alia access the premises where the goods are produced and ask for any information/documents necessary for the monitoring and/or performance of the SNFA’s further undertakings in this respect. The SNFA may also issue orders and prohibitions where this is necessary in order for the goods to comply with specific EU regulations and/or national provisions.

- 12) Please describe any other developments in your country in relation to GIs or AOs which you consider relevant, including any proposals for reform. For example, to the extent that your country has been involved in any negotiations or discussions regarding the protection of GIs and AOs in any fora, such as multilateral, regional or bilateral agreements, please specify whether your country is negotiating or has signed any agreement with other countries that includes provisions on AOs/GIs and whether it was necessary to amend domestic legislation as a result of such agreements.

In July 2014, the European Commission published a green paper entitled *Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products*², aiming at harmonised GI protection for non-agricultural products in the EU. The green paper had its background in a 2011 communication³ from the EC on the prospects of a single European market for IPR, a 2013 study⁴ that argued in favour of introducing GI protection at EU level, and a subsequent 2013 public hearing, the results of which were assessed to confirm conclusions of the study.

The Swedish government through the Ministry of Justice responded to the green paper in 2014⁵, arguing against expansion of GI protection to non-agricultural products, based on the superiority of harmonised trade mark protection, stating specifically that GIs should give way to previously registered trademarks in the case of conflict. Additionally, the government raised possible negative economic effects and trade negotiation hurdles as downsides to GI expansion.

It is also worth mentioning the report on the green paper by the Committee on Industry and Trade in the Swedish Parliament, published in October 2014.⁶ The Committee considered GI expansion to possibly entail enhanced consumer production, but that such protection, if enacted, should not incur administrative burdens on businesses, and that GI expansion should not pose a hurdle in international trade enhancement negotiations or limit competition.⁷

The national act regulating GI protection (2009:1424) (as well as the Swedish Trademark Act) was amended in 2015⁸ to reflect changes in EU regulations⁹ governing the protection. Minor changes in language were made through the amendment as well. The only substantive material expansion of GI protection through the amendment concerned aromatized wine products.¹⁰

Presently, the government is considering a public committee report¹¹ outlining a reform of the trade mark system, based on the new EU regulation¹² and directive¹³. The report proposes a new act on GI protection, incorporating rules on sanctions and actions for infringement of a protected GI.¹⁴ Sanctions enacted through the implementation of the IPR enforcement directive¹⁵ were accompanied by provisions on sanctions in bilateral

² COM(2014) 469 final

³ COM(2011) 0287 final

⁴ Insight Consulting et al, *Study on geographical indications protection for non-agricultural products in the internal market*, February 2013

⁵ Ju 2014/5513/L3

⁶ 2014/15:NU6

⁷ Ibid., p. 9-10

⁸ Prop. 2015/16:32

⁹ 1151/2012, 1308/2013, 1306/2013, 251/2014

¹⁰ Cf. Ds 2015:13, p. 27

¹¹ SOU 2016:79, *En känneteckensrättslig reform*

¹² 2015/2424

¹³ 2015/2436

¹⁴ SOU 2016:79, pp. 331

¹⁵ Proposition 2008/09:67, p. 246

trade agreements between the EU and third countries in subsequent years. The report proposes moving the current section on sanctions in the Swedish Trademark act (10:7 §) to the new act. The proposed new provision will however not cover those trade agreements that do not contain details on sanctions for GI infringement. Furthermore, the new act will also specify that the Swedish Patent and Market Court has exclusive jurisdiction in cases concerning GI protection, including protection covered by bilateral trade agreements. (The exception to this would be labour related cases, which will continue to be within the exclusive jurisdiction of the Swedish Labour Court).¹⁶

The committee report was published in November 2016 and has recently been remitted to stakeholders for input. The Swedish government is currently assembling said input and a bill to propose the changes to concerned laws is expected later in 2017.

II. Proposals for improvements and for harmonisation

- 13) Should there be harmonised definitions of AOs and GIs? If so, please propose appropriate definitions and prerequisites.

Yes, the Swedish Group is of the opinion that, as a general principle, harmonization is desirable.

The system used by EU under the Regulation could serve as template for definitions and prerequisites to be implemented in a global regime for the harmonised protection of AOs and GIs, under either the auspice of WIPO or through amendment or supplement to the TRIPS agreement.

- 14) Should there be a registration procedure for AOs and GIs? If so, what should its key features be? For example, content of the application; examination by competent bodies; possibility of opposition by third parties.

Yes, similar to the above, the Swedish Group believe that the European system could again serve as a model template for how to handle the registration procedure for AOs and GIs, as it provides a functioning system for determining the correctness of applications based on both local expertise and on a supranational coordinative perspective.

- 15) What should the grounds of invalidity/loss of rights for GIs and/or AOs be? For example, becoming generic, lack of use, not paying fees. Please specify what the applicable test should be, how such should be proven and who should bear the burden of proof.

The Swedish Group is of the opinion that the grounds and applicable test explained above are sufficient.

- 16) How should conflicts between GIs/AOs and prior trademark rights be regulated?

¹⁶ SOU 2016:79, p. 334-337

The Swedish Group is of the opinion that the rules that apply today are sufficient as GI/AO enjoys the same protection as trademarks and the requirements that apply for trademarks work well also for GIs/AOs.

- 17) What scope of protection should GIs/AOs have and should it matter if these are domestic or foreign? Against which conduct by third parties should they be protected?

The Swedish Group is of the opinion that the scope of protection awarded to these rights today is sufficient. It should not matter whether the GIs/AOs are domestic or foreign and the rules that apply today that give the owner the same right as ordinary trademark owners are sufficient. It has been suggested that the coming changes in the Swedish Trademark Act shall include an explicit statement that GIs/AOs that are subject to the bilateral and international agreements between EU and other countries are also protected under the Swedish Trademark Act. Thus, the scope of protection as it is today is sufficient in the Swedish Group's opinion.

- 18) Who should have legal standing to protect a GI/AO and which remedies are appropriate?

The rules that apply today explained above are sufficient according to the Swedish Group's opinion.

- 19) Should there be a specific provision or practice concerning the inclusion of a GI/AO in a domain name?

There are already specific provisions in the Terms and Conditions of registration (.se T&C) and the alternative dispute resolution process available for domain name disputes under the .se ccTLD, protecting domain names that include GIs and AOs. According to clause 7.2 (g-i) of the .se T&C, a complainant in a domain name dispute may base its claims on the following GI/AO:

- i) geographical indications and designations of origin for agricultural products and foodstuffs, according to Council Regulation (EC) No. 510/2006 of 20 March 2006,
- ii) geographical indications of spirit drinks, according to Council Regulation (EC) No 110/2008 and
- iii) geographical indications and designations of origin, according to Council Regulation (EC) No 1234/2007.

Provided the disputed .se domain name is identical or confusingly similar to any of the above-mentioned rights (in which the complainant has rights), and the domain name owner have no rights or legitimate interests in respect of the domain name and the domain name has been registered or is being used in bad faith, the complainant should prevail. Note that it is easier to prove bad faith in the .se dispute resolution system compared to the UDRP, where the complainant has to prove that the domain name has been registered in bad faith *and* is being used in bad faith.

The Swedish Group's opinion is that the current provisions in the .se T&C are satisfactory to protect GIs and AOs under the .se ccTLD.

Responses to this Questionnaire

Groups are requested to submit responses to this questionnaire **by May 29, 2017**. Responses should be sent by email to StandingCommittees@aippi.org and should clearly indicate that they are responses to this questionnaire.