

DG AGRICULTURE AND RURAL DEVELOPMENT
WORKING DOCUMENT, OCTOBER 2008

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BACKGROUND PAPER TO THE GREEN PAPER ON AGRICULTURAL PRODUCT
QUALITY

GEOGRAPHICAL INDICATIONS

1. INTRODUCTION

"Geographical indication" is a well defined type of intellectual property right. It may apply to all kinds of goods.

Protection for geographical wine names at Community level commenced in the 1970s. A first harmonised regulatory framework in the EU (for agricultural products and foodstuffs) was created in 1992. Despite some challenges (court cases and a WTO panel) the aim of the regulation, to provide for the registration and protection of eligible names, has remained the same. The regulation has been modified three times (in addition to Accession Treaties): in 1997 and 2003 to introduce some adjustments and in 2006 to bring the scheme into full conformity with the WTO panel ruling and to simplify procedures, clarify the role of Member States and make the use of the EC symbol or indication compulsory.

By September 2008, 812 names from 21 MS and Colombia have been registered and almost 304 applications for new registrations from European Member states, Switzerland, China and India are pending.

In addition to the regulation for agricultural products and foodstuffs, EU has three other regulatory frameworks for wine, aromatised wines and spirit drinks proposing EU-managed systems of protection.

The EU has not implemented any harmonised system for handicrafts or other processed products.

1.1. Scope

- Regulation (EC) No 510/2006 covers:
 - Agricultural products intended for human consumption and listed in Annex I to the Treaty (this definition covers also fish and fishery products)
 - Foodstuffs listed in Annex I to the Regulation, such as beers, salt, pasta and pastry.
 - Other agricultural products (not intended for human consumption) listed in Annex II to the Regulation), such as essential oils, cotton, flowers and plants and scutched flax.
 - Does not include handicrafts, textiles, mineral waters, wine and vine products (except wine vinegars) and spirit drinks.
- Wine GIs are regulated under Regulation (EC) No 479/2008 of the Council on the common organisation of the market in wine.
- Spirit drinks GIs are regulated under Regulation (EC) No 110/2008 of the European Parliament and the Council on the definition description, presentation, labelling and the protection of geographical indications of spirits drinks and repealing Regulation (EEC) No 1576/89.

1.2. Definitions:

Geographical indication means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— originating in that region, specific place or country, and

— possessing a specific quality, reputation or other characteristics attributable to that geographical origin, and

—production¹ and/or processing and/or preparation of which take place in the defined geographical area.

The fact that production of raw materials do not have to occur in the defined geographical area may lead to a common situation for processed foodstuffs, where a product bears the name of the region where it is made and with which it is closely associated, but raw materials do not come from the region (e.g. Salame Cremona, Sobrasada de Mallorca). The manufacturers may require a particular quality or grade of raw material, rather than a particular origin. However, might consumers nevertheless expect that for a processed product that not produced in the region concerned but also that all the raw materials come from that zone or at least the surrounding area? This depends on the expectations held by consumers.

Consumer expectations on origin of raw materials may vary from one product to another. For instance, consumers may not expect that all the components of a "Turrón de Jijona"

¹ For wine, in addition, 85% of grapes have to be harvested in the area.

(sugar, almonds) come from the area of Jijona, but they may expect that the pigmeat for Mortadella Bologna or Jambon d'Ardenne is sourced from the local region.

Designation of origin² asks for a stronger link to the area, as the quality or characteristics of the product have to be essentially or exclusively due to a particular geographical environment (with its inherent natural and human factors), and the production, processing and preparation have to take place in the defined geographical area.

By way of derogation from the rule that raw materials must come from the area, some sourcing from outside the production zone has been possible in the past. As a result, for some of the most famous PDOs (Roquefort, Prosciutto di Parma, West Country farmhouse Cheddar, Jerez) raw materials come from a larger area than the production area.

Traditional geographical or non geographical names shall also be considered as designations of origin or geographical indications , e.g. Feta.

1.3. Protection

The level of protection for both PDOs and PGIs is identical.

Producers and other operators have the right to use the name to describe originating product that is in conformity with the specification. This is sometimes referred to as "positive protection".

The product names are protected against:

- (a) any direct or indirect commercial use of a registered name in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;
- (b) any misuse, imitation or evocation, even if the true origin of the product 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;
- (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned,
- (d) any other practice liable to mislead the consumer

For wine, protection is also extended to services.

Referring to international agreements, the terms of protection for the geographical indications protected and registered in the EU for agricultural products and foodstuffs, wine and spirit drinks broadly correspond to the high level of protection reserved in TRIPS to wine and spirits.

² The term "designation of origin" is not foreseen in the spirits Regulation.

For agricultural products, the system of registration and protection is exclusive EC competence for all the names to which it applies. This precludes the possibility to protect geographical names for those products at national level. For wine and spirits it remains possible to allow national indefinite protection.

The enforcement of protection is ensured by public authorities (administrative protection), but can also consist of private actions.

Concerning controls on the production process, according to Article 10, paragraph 3 of Regulation (EC) No 510/2006, the Commission shall make public names and addresses of the competent authorities and control bodies. These controls can result in the exclusion of producers and operators, within the defined area, who do not fulfil with the requirements of the specifications.

The following cannot be protected as PDOs or PGIs where to do so would mislead consumers, or can only be protected subject to certain conditions to balance the interest of all parties: generic names; names of plant varieties, renowned trademarks and animal breeds.

2. LEGAL FRAMEWORK

1. Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs and

Commission Regulation (EC) No 1898/2006 of 14 December 2006 laying down detailed rules of implementation of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

2. Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999.

3. Spirit drinks GIs under Regulation (EC) No 110/2008 of the European Parliament and the Council on the definition description, presentation, labelling and the protection of geographical indications of spirits drinks and repealing Regulation (EEC) No 1576/89.

The core of the systems is in each case intellectual property protection for registered names.

A key issue is the relation between trademarks and GIs (see box below)

Box 1: GI's and trademarks: some clarifications

Relationship between conflicting (or potentially conflicting) names:
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- a trademark (applied for or protected) and
- a GI (applied for or protected).

Three possibilities:

- A prior trademark's reputation and renown may prevent the registration of a GI if registration of the GI carries the risk of misleading the consumer as to the true identity of the product.
- Registration of a GI prevents registration of a trademark that was applied for after the application for the GI. In this case, national or European trademark offices shall refuse the registration of a trademark.
- Any trademark, other than one covered by the 1st indent, applied for or registered before the date of application for registration of a GI (that is subsequently registered), and used or established under certain conditions (good faith), shall coexist with the registered GI.

The relationship between trademarks and geographical indications was one of the aspects addressed in the WTO panel. During the adoption of Regulation (EC) No 510/2006, it was noted that the text of Article 14 was not clear and could be read as if there were a hypothetical possibility to have a gap in the coexistence provisions between a trademark and a GI. Wording has been corrected in the wine regulation, and should also be corrected in Regulation (EC) No 510/2006.

2.1. Differences and similarities of the EU existing systems

Important similarities are:

- Definition of geographical indication and designation of origin.
- Scope of protection.
- Administrative enforcement of the protection.
- Relationship with trademarks (although an inconsistency in effective dates of protection persists in Regulation (EC) No 510/2006).
- Rules on coexistence with homonymous names.
- Creation of a register (electronic for wine, annex III of regulation for spirit drinks and formal register for agricultural products and foodstuffs).
- Availability of specification (website).
- Existence of a two steps registration procedure, objection procedure, and cancellation procedure.

Important differences are:

- Coexistence of national and EU protection systems (for wine and spirits).
- No amicable procedure after an objection in wine and spirits drinks proposal, but a Commission decision. In Regulation (EC) No 510/2006, after an admissible objection is received, a period of appropriate consultations of 6 months is open, inviting applicant and opponent to find an agreement.
- Names of documents to be included with an application.
- No MS harmonisation on national procedure prior to submission (national procedure and objection) for spirits drinks.
- Control procedures.
- Committee: regulatory for agricultural products and foodstuffs and wine, regulatory under PE scrutiny procedure for spirits.
- Some delays are different: No maximum delay for examination for wine (12 months for spirits and agricultural products and foodstuffs) and 2 months opposition delay for wine (6 months for spirits and agricultural products and foodstuffs).

3. ECONOMIC BACKGROUND

Some case studies on certification schemes have been conducted in 2006 by JRC/IPTS and ETEPS AISBL (dated 30/11/2006). For PDO/PGI the following schemes have been analysed: Baena (olive oil, Spain), Comté (cheese, France), Dehesa de Extremadura (ham, Spain) and Parmigiano-Reggiano (cheese, Italy).

The case studies shown benefits on rural development (tourism, employment in the areas) and on the whole chain (food industries, ripeness, sales agents, retailers, bottling plants). Some studies shown price premium for producers and added value on the elaboration stage (cheese making, oil making). The schemes would also bring benefits to the rest of producers of the area as would have effect on the overall production of the product or foodstuffs. The schemes would be a tool to stabilise prices and as a consequence, be a good instrument to amortize changes in legislation (milk quotas reform).

Evaluation on PDO/PGI scheme for agricultural products and foodstuffs: To support the Policy review on PDO/PGI (please see point 8 of this paper), an interim evaluation of the PDO/PGI scheme has been undertaken which examines the effectiveness and, efficiency of the policy measures in question and investigates on issues of relevance for the policy review. By doing so, the evaluation shall provide elements for feeding the process of the policy review on the PDO and PGI scheme.

Final report is expected by end 2008.

Several case studies have been carried out under Siner-GI project (DG Research). An UNCTAD-ICTSD project will presumably issue an interesting paper (presently at draft stage on the "The socio-economics of geographical indications" by Dwijen Rangnekar).

"Geographical Indications and Rural development in the EU" a study carried out by C. Folkesson (2005) makes a review on case studies on PDO/PGI schemes. The study concludes that evidence provided by the studies supports the idea that production of GI contributes to rural development, through income generation and employment to less-favoured regions in Europe. The majority of case studies presented show that production of GI products benefits the region of production more than the production of "standard" agricultural products does.

Economic survey: DG Agri launched an economic survey to seek for further economic data on PDO/PGI. Some 140 answers have been received and analysed.

4. CURRENT IMPLEMENTATION

4.1. EU level

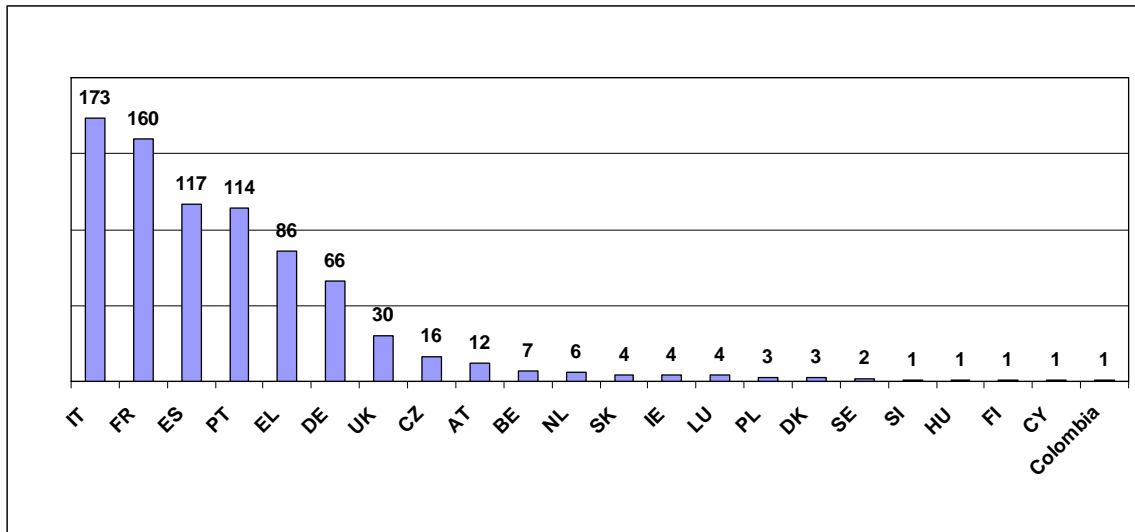
- Register of protected designations of origin and protected geographical indications (only for agricultural products and foodstuffs) includes 812 names (26.9.2008) (see annex II). Out of these, 491 were registered under Article 17 (fast track procedure: no publication in OJ³ series C and no objection procedure).
- By 26.9.2008 objection period is running for 16 names.
- By type of product, meat and meat products represent 24% of the registrations, followed by fruits and vegetables (22%). Evidence from the register is demonstrative of regional specialisation within categories (table 4, annex II). Thus, Italy accounts for 30% and Greece and Spain both for 18% of fruit and vegetable names, while 27% of registered names for cheeses come from France. Germany counts for 70% of beers.
- For wine, 1800 names protected from 27 MS and 2 from third Countries (Brazil and US)
- For spirit drinks, 325 names from all MS in the EU.
- No fees are requested neither for EU or third-country applications, currently 13 applications for agricultural products, from Switzerland, China and India (2 applications, directly submitted by producer groups).
- Commission makes public the names and addresses of control organisms.

4.2. Member States

- Figures for agricultural products and foodstuffs show that in some MS the system is more widely implemented (see table 1 below). Italy, France, Spain and Portugal together count for 70% of the registered names.

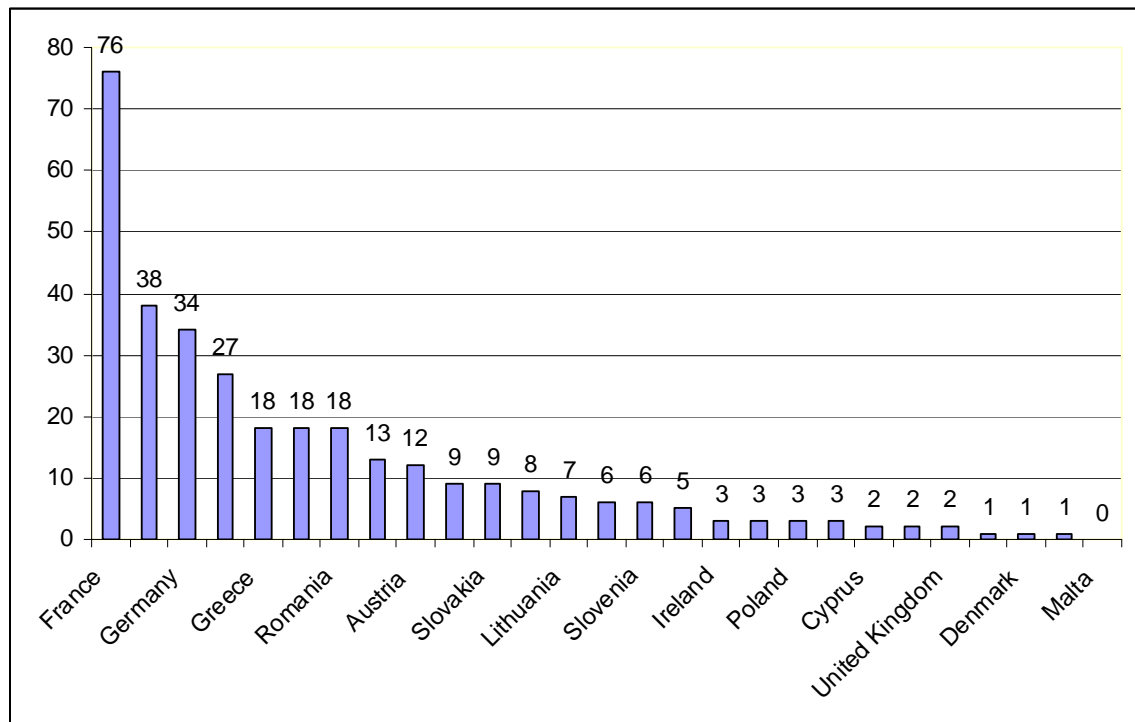
³ Since 2004, amendments on Article 17 registrations do include a publication in the Official Journal of an updated summary (16 registered till today).

Table 1: PDO/PGI for agricultural products and foodstuffs per country



- For spirit drinks, implementation is more distributed among 27 MS (see table 2 below, Malta applications are on pipeline).

Table 2: PGI for spirit drinks per MS



- MS are required to analyse applications and launch a national objection procedure (delays vary from 30 days to 5 months). MS have the possibility to grant transitional protection from the date the application is received in the Commission and grant adjustment periods to allow firms to comply with the scheme.

- MS are also responsible for the administrative controls for the names protected in the whole EU (under the register and also names notified under the wine and spirits system);

Some Member states also apply national systems for products not covered by Regulation (EC) No 510/2006. France, Czech Republic, Slovak and Bulgaria (according to WIPO system) protect non-food products (ceramics, clothing, stones, etc... even a mud, Piestany mud in SK).

4.3. Producer groups/producers

- Producers support the cost of traceability requirements (often more strict than those laid down in general food law), controls and membership to producer groups.
- Some studies do show a price premium on the final GI product compared to a standard product. Nevertheless, there is no consensus on how added value is distributed along the supply chain. Free-rider phenomena may occur; nevertheless the use of the GI by an additional producer does not involve additional cost to the others.
- The producer group establishes the specification. Once this is approved, the producer group carries out some other specific tasks: modification of the specification, developing control or certification schemes, managing production at various stages of the supply chain, promotion and protection the GI.
- Some studies indicate that PDO/PGI schemes could be obstacles to innovation. However, a recent study on innovation in cooperatives shows that GI-schemes are considered as a useful tool of innovation.

4.4. Official controls/

Article 10 of the Regulation (EC) No 510/2006 sets official controls within the framework laid down in Regulation (EC) No 882/2004 on official controls performed to ensure verification of compliance with feed and food law; animal health and animal welfare rules.

Controls on production in accordance with specifications are either undertaken by the public authorities or by control bodies, independent third party to which the competent authority has delegated certain control tasks and which operate as product certification body.

From 1st May 2010 accreditation will be compulsory for private control bodies. In this regard, Regulation (EC) No 765/2008 setting out requirements for accreditation and market surveillance relating to the marketing of products has been adopted on 9 July 2008

- For wines, Common Market Organisation specific control measures apply.

5. WTO CONTEXT AND BILATERALS

5.1. Panel

In 2003 a panel was brought by the United States and Australia against the EC system of protection of geographical indications and designations of origin for agricultural products and foodstuffs. There were about 40 claims challenging different aspects of the EC system, and almost all were dismissed.

Nevertheless, the panel recommended that the EC clarified the text of the Regulation on the condition of reciprocity to make clear, as the EC had argued in the Panel, that no condition of reciprocity would be imposed as a condition of registering a name from a 3rd country. The panel also recommended giving direct access to foreign applicants, and not through their government.

Despite this, the EC was satisfied from the decision of the WTO panel, as it dismissed the claim on the relationship between GI rights and prior trademarks rights, and found that rules of EC regulation as presented to the Panel were in conformity with WTO rules.

In order to bring the scheme into conformity on the two areas identified by the Panel, Council adopted a new regulation in March 2006.

5.2. DDA negotiations

WTO negotiations on GIs focus on two main issues:

- Establishment of a binding multilateral GI register. The EU proposal assures that GIs registered in their country of origin are presumed to be GIs also in other WTO Member countries and that they are not to be considered generic (common names) in these countries. The burden of proof that such presumption is not justified, i.e. that the GI does not comply with the TRIPs definition or is generic, shall fall on the opponent. But the proposal does not go as far as direct registration of the GIs in all WTO Members
- the extension of the protection foreseen for GIs for wines and spirits to GIs for other products (TRIPs). Extension of GI protection to other products than wines and spirits is supported by a number of WTO Members including India and China.

5.3. Bilateral agreements and dialogues

For wines and spirits, the general approach to seek for protection of GI's has been the exchange of lists of protected names. Under this approach, for wines and spirits agreements have been concluded among others with Canada, Chile, US (labelling agreement), Switzerland, Australia (only wines), Mexico (only spirits), and South Africa. Wine and spirits agreement include also provisions on certification, oenological practices, labelling and other trade aspects. For all agricultural products (including wine

and spirits) an agreement, under the Economic Partnership Agreement has been concluded with Cariforum (not yet ratified)⁴

Bilateral negotiations for protection of GI's include a thorough check on the system under which the GIs were approved by the 3rd country. An objection procedure is also run to ensure protection of the interests of any prior users of the names.

Several types of agreements which are under negotiation (FTA, ad-hoc, EPA) include GI provisions. Presently negotiations are running with a considerable number of countries or regional groups i.e. Switzerland (annex on GIs for agricultural products and foodstuffs under the FTA agreement), Korea (under a FTA agreement), Georgia. The negotiation with Georgia is relevant, as it is the first time that an agreement concerns only geographical indications, and is covering wines and spirits as well as agricultural products and foodstuffs.

Agricultural dialogue on GI's is also a frequent practice i.e. administrative cooperation is going on with China.

6. EXPERIENCE IN TRADE PARTNERS

Under TRIPs agreement (1996) WTO members shall implement a legal system to protect geographical indications. Some WTO members have been applying the system under trademark law (through certification trademarks and collective trademarks) and are granting only TRIPs level of protection. Other members have been implementing a higher level of protection through a so called *sui-generis* system (i.e. the EC for agricultural products), and grant administrative protection.

Situation are then diverse among trade partners, in relation on the level of protection, the implementation under a trademark or a *sui-generis* law, enforcement through administrative action or private initiative, level of protection, relation to trademarks, etc.

On one side Switzerland benefits for a *sui-generis* system similar to EC Regulation (EC) No 510/2006, which currently protects 22 names (including spirits).

In China 3 parallel systems exist, allowing protection under a *sui-generis* system (one managed by AQSIQ and the other by The Ministry of Agriculture) and a trademark system. Both systems are not related, so to be fully protected, a name as to seek registration under both systems. Korea also has a split system.

In India, a law laying down a *sui-generis* system has also been adopted, for agricultural products and foodstuffs (10 names), and handicrafts (30 names).

The majority of GI system of trade partners (e.g. China, Thailand, India) include handicrafts.

⁴ Antigua, Barbados, Bahamas, Belize, Dominican Rep., Grenada, Guyana, Haiti, Jamaica, St Lucia, St Vincent, St. Ch. & Nevis, Surinam, Trinidad & Tobago.

On the other side, the United States provides only the option of protecting names under trademark law which includes provisions for protection for GI's under a certification trademark or a collective trademark. In the wine sector, 'names of geographic significance' are protected but not clear whether they also qualify as GIs in the sense of TRIPS.

7. 'FUTURE POLICY REVIEW' PROCESS

7.1. Review of Regulation (EC) No 510/2006.

In a declaration of the Commission issued on 20.3.2006 in the context of the adoption of the Council Regulation (EC) n° 510/2006, the Commission promised to undertake a policy review of the operation of the regulation and its future development. According to the declaration, the review will cover all aspects of the policy that Member States, the Commission and stakeholders may wish to raise, but based on the demands raised by Member states during the discussion of the regulation, the following items for reflection were identified in the declaration:

- Use of alternative instruments such as trademarks (e.g. collective or certification TM) to protect geographical indications.
 - In line with previous paragraph, advantages and disadvantages of using a *sui generis* system providing administrative protection to GI's (as is the case in the EU) or a system based on trademarks (as is the case in the US) should be discussed, as well as possible complementarities between them.
 - This issue could also be raised in the context of the reform of wine protection system. The debate will have certainly effects on the 2 other systems of protection for wine and spirits.
- Scope of products covered by the Regulation with particular consideration to salt, mixed herbs, wicker products and condiments.
 - MS did propose to include marine hand harvested salt, mineral salt⁵ and monoï. Including other 3C products could also be considered.
 - This issue would not be relevant for wines and spirits.
- Identification of the origin of raw materials refers to the labelling of the country of origin, the region or the place for raw material entering in the process in geographical indications and some designations of origin (when production does not take place in the area). This is an issue for PGIs – e.g. pastry, beers, meat products.
 - The issue may be related to discussion on another issue considered in the scope of the green paper as the relevance of an EU label.
- Criteria used to assess the generic status of a name.

⁵ Salt and cotton have been included through Regulation (EC) No 417/2008 JO L 125 (9.5.2008).

- The request to adopt an indicative list on names that have become generics is not any more included in the present Regulation. Some MS and stakeholders have suggested Commission to propose an indicative list, together with the criteria.
- Identification of PDO and PGI as ingredients.
 - This item refers both to information to the consumer (how to inform consumer, rules of use of the PDO/PGI indications or symbols) and to rules (who has the right to decide? under which criteria?) on the use of the protected names in sales designation of products that are not covered by the specification. Products concerned may be canned products, processed products or food products, as pizza, etc. that are advertising the protected geographical indication or designation of origin as ingredient.
 - This issue is certainly also relevant for wine and spirits.
- Design of the Community symbols identifying geographical indications and protected designations of origin.
 - The differentiation of PDO symbol from PGI symbol has been made through Commission Regulation (EC) No 628/2008 of 2 July 2008 amending the symbols. The issue should be considered also in view of the compulsory use for agricultural products and foodstuffs of the Community symbol (or the Community indication) as from 1 May 2009. The possibility for non-EU GI to use the Community symbols also appears to be a concern for stakeholders.

7.2. Other issues

Some MS have indicated some issues that would need to be addressed, such as how to facilitate monitoring of the market with a view to improve the identification of abuses of GIs and eliminate such abuses, i.e. make public list of producers which are controlled for each PDO/PGI.

Shortening of delays (examination and objection), use of an "agency" to deal with applications, restriction of objection possibilities and mechanisms to increase cooperation among producer groups were also advanced as subjects to debate.

Stakeholders advance the need to reflect on the rights given to producer groups on the management of the GI: are producers right-holders or at least managers of the rights of the PDO or PGI, for instance via Consorzi or Consejos reguladores?

Some stakeholders would like to stress the need for an open debate at Member State level on the Community approach on geographical indications in international trade (bilateral and multilateral).

7.3. Simplification and clarification of the regulations

A revision of regulations following the consultation process started with the Green Paper could also be an opportunity to simplify procedures, i.e. shorten objection procedure delay from 6 months to 2 months as in the wine CMO (to adopt one delay for the 3

systems), shorten the examination delays, reduce burden on translations and OJ publications (through reduction of the content of the single/technical document)

Finally, the revision of the regulation could also address some clarification issues, such as the relation between trademarks and GI's for Regulation (EC) No 510/2006 and Regulation (EC) No 110/2008 or the responsibility of MS in relation to the administrative enforcement of protection.

ANNEX I : THE EU REGISTER ON PDO-PGI FOR AGRICULTURAL PRODUCTS AND FOODSTUFFS, SOME DATA (30.09.2008)

Table 3: Distribution of PDO/PGI by class of product

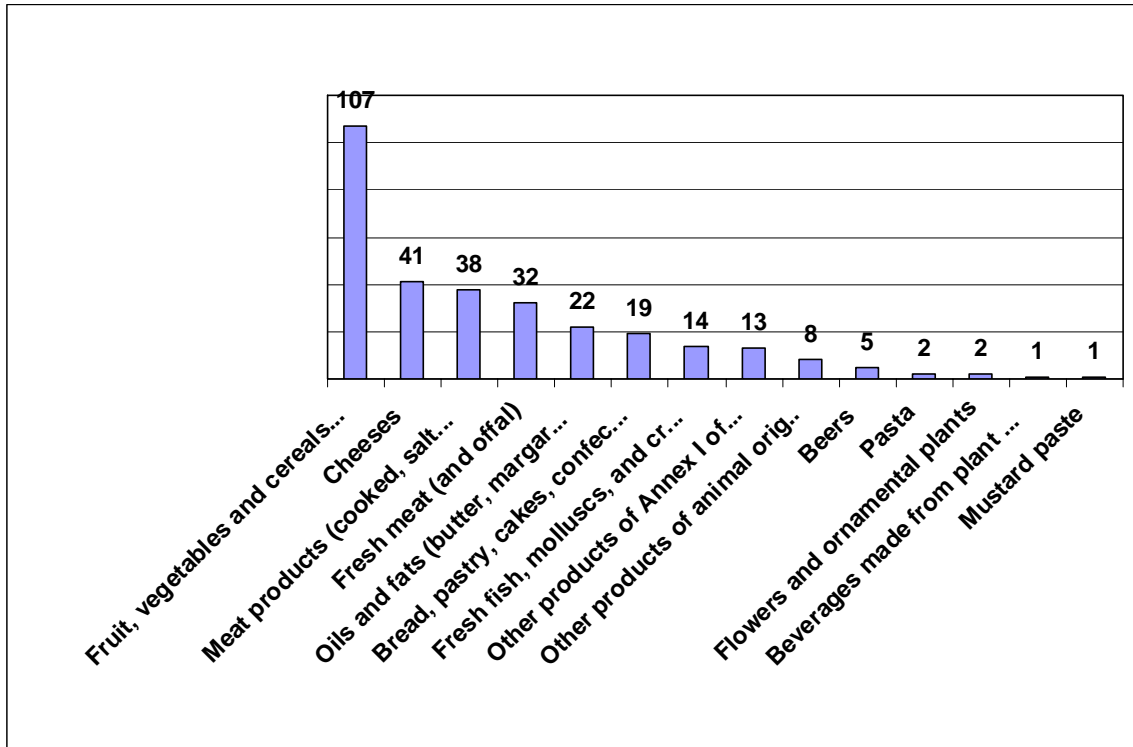


Table 4: regional distribution of PDO/PGI by class of product and "top country holder"

<i>Class of product</i>	<i>No registrations</i>	<i>Top country holder</i>
Fruit, vegetables and cereals fresh or processed.	196	Italy (54) Spain (35), Greece (33)
Cheeses	166	France (46) Italy (34)
Oils and fats (butter, margarine, oil, etc.)	106	Italy (38) Greece (26)
Fresh meat (and offal)	111	France (51) Portugal (27)
Meat products (cooked, salted, smoked, etc.)	92	Portugal (36) Italy (30)
Natural mineral waters and spring waters (discontinued)	31	Germany (31)
Other products of animal origin (eggs, honey, various dairy products except butter, etc.)	25	Portugal (10) France (7)
Bread, pastry, cakes, confectionery, biscuits and other baker's wares	28	Spain (8) Czech Republic (5)
Other products of Annex I of the Treaty (spices etc.)	25	France (7) Spain (4), Italy (4)
Beers	18	Germany (12) Czech Republic (4)
Fresh fish, molluscs, and crustaceans and products derived there from	15	United Kingdom (3) Germany (3)
Natural gums and resins	2	Greece (2)
Essential oils	3	France, Greece, Italy (1)
Hay	1	France
Pasta	1	France



ANNEX II: APPLICATIONS UNDER REGULATION No (EC) 510/2006

Table 5: PDO/PGI Applications for registration (new names only) by country (31.08.2008)

