



SINER-GI

Task 2: WP5  
GI Case Studies

Case Study Report :  
**ROOIBOS**

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### 1. **Executive summary**

This report presents the case of one of the most emblematic South African candidate for a Geographical Indication (GI), the rooibos. Rooibos is an herbal tea made from *Aspalathus Linearis*. It only grows in the Cedarberg region of the Western Cape Province and the high lying areas in the southern parts of the Northern Cape Province in the fynbos biome in South Africa. It is also only processed in this region and is known as a specific product from South Africa. Rooibos is the Afrikaans word for 'red bush'. It has become a popular tea worldwide, especially appreciated for its polyvalence and health benefits.

With the increased international demand for rooibos tea, some producers feel there is a threat of possible delocalisation of the production outside the country. Another more immediate threat arose with the registration of trademarks on the name rooibos by different companies in different countries. This resulted in a major legal battle in the United States that made rooibos famous. The term 'rooibos' was registered there as a trademark in 1994 by a South-African company to draw profit from its exclusive rights in marketing rooibos under this name in the United States. In 2001, the company has assigned its trademark to its US agent. Rooibos Ltd, assisted by the South African Department of Trade and Industry (DTI) and the Western Cape Government, contested this

registration for more than 6 years and had to spend almost 6 million Rand (750.000 euros) in legal fees, before they achieved an agreement with the agent, which recognized officially in June 2005 the cancelling of its registered trademark. As a result of this big incident, the South African Rooibos Council was established to represent the whole industry and act as a vehicle for collective action. One of its four strategic objectives is to protect the rooibos name for the industry. To this end, a Task Team consisting out of a representative from processors, marketers, commercial farmers, emerging farmers and from the NGO environment was appointed by the industry in 2006. It is actively supported by researchers, among which are those reporting this case study, from the Western Cape Department of Agriculture (Provincial Department), the University of Pretoria, the CIRAD and Cape Nature (the Nature Conservation Parastatal of the Province). At its most recent meeting the decision was taken to activate the legal proceedings to ensure the appropriate local protection and a local Law Firm was mandated accordingly.

Although South Africa has a *sui generis* system for GI in wine and spirits (Act 60 of 1989), it only provides minimal protection for non-wine and spirits GI as required under South Africa's international obligations. South Africa complies with the TRIPS provisions through a combination of consumer protection and unfair competitions laws and its trade marks registration system (Bramley & Kirsten, 2007). The official South African international position regarding GI is fairly negative. However, this position is in the process of being eroded as a result of increasing examples of usurpation abroad. The most prominent and influential of these examples (but not the only one) is that of rooibos, which is considered to be part of the South African patrimony, with a significant part of South African people aware of the legal battle that took place in the USA.

The promotion and development of a specific system of protection for non-wines and spirits products is currently being debated in the political arena (Department of Trade and Industry), driven by the agricultural departments of four provinces (Western Cape, Eastern Cape, Northern Cape and Kwazulu Natal), and now taken over at the national level by the National Agricultural Marketing Council. It is envisioned that a *sui generis* system would be a tool for valorising localised productions and improving underprivileged communities' livelihoods. The most advanced initiative at the industry level and the only case that has formally taken steps towards developing a GI in South Africa is that of rooibos that is to a certain extent playing a role of pilot case to see how GI could be developed in South Africa and a role of model that may be followed by other industries. The industry is playing the role of lobbying towards the government and in particular the DTI for the development of an appropriate institutional framework.

Traditionally gathered in the wild, rooibos is nowadays mainly cultivated. Through a fermentation process, rooibos gets its characteristic red colour, its distinctive flavour and sweet aroma. It has a long history related to a specific territory: the processing stage still mainly relies on traditional methods, which trace back to the Khoi and San populations over 300 years ago. Rooibos cultivation practices have been developed over the last century by the different settled populations. Rooibos cultivation is now strongly associated with the landscape of the Cedarberg region and is a key element of its identity. Rooibos has become a South African heritage. Different qualities of rooibos tea are attributed to different soil and climate conditions, with some areas recognised for their better quality.

Primary production involves between 300 and 450 farmers, both commercial farmers (about 97% of production) and small-scale. Areas under cultivation ranges from a few hectares to over 5 000 hectares per farm, but these large-scale producers, are in the minority. Most of the small-scale farmers are members of two cooperatives that grow, process and market rooibos mainly for the fair trade market. Rooibos processing is dominated by 8 large companies mainly located in the Cedarberg production zone that collect and transform rooibos, and sell it to intermediaries who

market it. Among these processors, Rooibos Ltd<sup>1</sup> detains 75% of market shares, dominating in particular the national market through National brands group. The turnover of the rooibos tea industry was estimated at 180 million Rands in 2004 (corresponding to 22.5 million euros). The export market represents more or less 60% of the production against 40% for the domestic market.

Rooibos is sold pure or in blends. The deployed qualification and certification strategies are diverse: fair trade, organic farming, 'wild rooibos tea'. These strategies can support strong differences in prices paid to the producers: in 2005, Rooibos Ltd, which production is mainly conventional (only 15% organic) paid 1,9 € for 1 kg of dried Rooibos while the Wupperthal cooperative, which production is all organic and valorised through fair trade channels, paid 3€ per kg . But this diversity concerns primarily the export market and is restricted to small niche markets. Most of the export (over 90%) is done in bulk.

In addition to the protection of indigenous names from usurpation, the debate and initiatives over GI have been driven by biodiversity and environment protection stakes. In the case of the rooibos industry in particular, where the evolution of the production practices constitutes a strong stake from an environmental point of view especially as a threat to biodiversity, these two approaches are contributing to the development of the GI process. Issues are raised due to the expansion of the cultivation area and to the intensification in practices. In addition to the development of biodiversity best practices, the core biodiversity elements are being incorporated into the product specification for rooibos.

Furthermore, the sustaining increased demand and lack of common quality standards on rooibos gives rise to opportunistic behaviors both from South African processors and traders - who need to create their space in a market strongly dominated by Rooibos Ltd - and from European buyers, on export tea quality. The subsequent risk of degradation of quality, and thus of loss of reputation, is perceived as an important threat by some actors. Furthermore, with the dynamics of innovation in the industry and the huge product range (not only the blend herbal teas but also cosmetics, soft drinks...), it also becomes more necessary for the commercial viability of the industry to make sure that it is rooibos that is used. With the expansion and opening of new markets, need for standardization becomes critical. But with more than 90% of the production sold in bulk and the European market being dominated by a few international tea brokers from Germany, control on overseas markets is very difficult.

Another challenge relates to the equity issues and the relations between resource poor farmers and commercial farmers with the power in the industry captured by the elites. Even if some resource-limited small scale farmers have succeeded in better penetrating markets through alternative marketing channels, their equity participation is still not secured inside the industry, due mainly to their financial and land constraints and their small volume of production with respect to the big companies. Their positioning in the fair trade market could be challenged by the recognition of large rooibos plantations as fair trade certified. Rooibos constitutes the main resources of these two communities of small-scale farmers. With the support of NGOs, they have been integrating almost all the steps of the supply chain, producing high value products and creating jobs. They have recently inaugurated a 'rooibos heritage route', a touristic route based on the idea of the touristic wine routes, some of these routes being famous in the Western Cape. This initiative has been developed by these two communities; and questions arise as to how it will be articulated to the rest of the industry, in which individual touristic strategies have been built around rooibos (e.g. guest houses advertising being rooibos farms and organising visits of the tea court), but not yet a collective or territorial one.

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<sup>1</sup> This company results from the Rooibos Tea Control Board, created in 1954 that was the only actor in processing and marketing rooibos until the 1990's. In 1993, it was voluntarily dismantled and its assets were shared among the producers who founded Rooibos Ltd.

Therefore, different collective and territorial issues are becoming important at the rooibos industry level, especially on the need to codify practices. The recent idea of developing a GI has appeared to constitute a relevant framework for discussion and negotiation around these issues. Interestingly, many of these issues arise with the expansion and development of the industry whereas many GIs in Europe have been set up to protect specific declining industries.

If the GI strategy appears as an interesting perspective for the rooibos sector and is currently being defined through a consultation process based on the GI task team, it will clearly depend on the evolution of the legal framework. Two options arise: i) GI remaining protected as collective or certification trademarks and thus being primarily based on initiatives from the industries, with questions related to international recognition and to the public good dimension; or ii) GI benefiting from a 'sui generis' system with public interests probably being fostered and better capacity to international recognition.

Beyond the protection of rooibos is the increased awareness that the broad diversity of indigenous products could be lost if no public, collective and proactive action were undertaken.

The originality of this case can be summarized in the following points:

- a highly specific plant mainly cultivated but also still harvested from the wild;
- GI reflection is developed after other qualification devices have been put into practices and thus, GI specific stakes and roles, and possibility for complementarity, can be better defined and/or more delimited;
- The dual features of the agricultural sector characteristics of South Africa that can challenge collective action and enhance the need for devising inclusive devices;
- the linkages with the policy process around GI engaged by the four provinces departments of agriculture, and supported by the IPR DURAS project.

## 2. National context analysis: GIs and the dynamics of national agrifood interests

[ To evaluate the significance of GIs as a strategy in different countries, it is necessary to examine the broader dynamic of their agriculture and rural development and the peculiarities of their institutional structure ].

### 21. Brief overview of national Trade and consumer policies

South Africa has been a member of the World Trade Organisation (WTO) since its inception and also a signatory of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as negotiated in the Uruguay Round of the WTO Negotiations. To this end South Africa complies with the TRIPS provisions through a combination of consumer protection and unfair competitions laws and its trade marks registration system (Bramley & Kirsten, 2007). Although South Africa has a *sui generis* system for GI in wine and spirits (Act 60 of 1989), it only provides the minimum protection for non-wine and spirits GI.

A more detailed overview of the national Trade and consumer policies is provided in Section 3 of the Work Programme 2 Country Report on South Africa.

### 22. Brief overview of general policy regarding Intellectual Property Rights

#### The GI legal framework

The South African legal framework for GI makes a clear distinction between protection for wines and spirits on the one hand and the protection for other agricultural products on the other hand. As this distinction is consistent with the provisions of the TRIPS Agreement, South Africa is compliant with it.

A formal indigenous system for managing and certifying the link between wine and its specific environment was created with the establishment of the Wine and Spirits Control Act in 1970 (Act 47 of 1970). This system was refined with the establishment of the Liquor Products Act of 1989 (Act 60 of 1989). In the latter Act a number of elements are relevant for the purpose of this paper:

- a) In Section 2 of the Act it establishes a Board that will be responsible for the development of policy and the appropriate systems.
- b) However, in Section 3 it allows for the delegation of the Administration of the System to another party that may be better suited for the administration of this system. At this stage the Administration of the Wine and Spirits Scheme is delegated to South African Wine Information and Systems (SAWIS).
- c) It makes provision for the establishment of the Wine and Spirits Scheme in Sections 14 and 15.
- d) As it is acknowledged that we are living in a fast changing environment, the Act provide in Section 27 for the majority of the details of the scheme to be proclaimed by Regulation.

As part of this System 22 Regulations have been published to date. The most important one that provided the foundation for the Wine and Spirits System was Regulation 1434 of 1990. This Regulation provided *inter alia* for:

- a) The details of the Scheme
- b) Delimitation of the Geographic Areas
- c) Prescripts for cultivar wines.
- d) Vintage wines

- e) Prescribe the conditions for the use of certain terms and prohibits the use of some other terms.
- f) Prescribe bottling, sampling, certification and the requirements for seals and labels.
- g) Payment of fees.

From 1985 to 2006 the volume of wine certified under this scheme has increased from 22,3 million litre to 330,2 million litre (SAWIS, 2007). This represents an increase of 1 382 percent over this period. At the same time it must be mentioned that the system receives no subsidies from government, but that the producers carry the cost of this system. The current cost of the System amounts to approximately R0,04 (about \$0,005) per bottle.

As this System allows for the formalisation of the linkage between the geographical area and the wine, the System makes provision, in an overlaying order and in declining order of size, for:

- a) 3 Geographical units
- b) 5 Production areas
- c) 21 Districts
- d) 56 Wards
- e) 129 Estates
- f) Single vineyards

This means that a producer may, according to individual needs, decide where to source the grapes for the wines. In practice it means that certain entrepreneurs would decide to produce Estate Wine of Origin, of course sourcing all grapes from the specific estate. In other instances an entrepreneur may decide it is more appropriate to have Wine of Origin from a bigger delimitation, allowing him to source grapes from a number of farms. In this case it allows the co-existence of trademarks and GI.

Finally, the System is very rigorous in terms of the Certification procedures and the latest technologies are being used. On the neck of each bottle a certification seal is attached. As each bottle has a unique number and the consumer can in real time query the number on the website, this allows for consumer participation and confidence.

In the case of non wines and spirits, South Africa does not expressly recognize nor provide protection for GIs. Only minimum protection, as required under South Africa's international obligations, is provided based on the combination of consumer protection and unfair competition laws, the Trade Marks Act. There are no statutory provisions which expressly protect the unauthorized use or registration of GIs. However, a few statutes afford limited protection to GIs. The law of trade marks, as regulated by the Trade Marks Act 194 of 1993, is the only means to establish a registered GI in South Africa, either as a collective mark, or in limited circumstances as a certification mark.

However, the promotion and development of a specific system of protection for other food products than wines and alcohols is currently being debated in the political arena (Department of Trade and Industry), driven by the agricultural departments of four provinces (Western Cape, Eastern Cape, Northern Cape and Kwazulu Natal), and now taken over at the national level by the National Agricultural Marketing Council. It is envisioned that a *sui generis* system would be a tool for valorising localised productions and improving underprivileged communities' livelihoods.

## 23. Brief overview of the main characteristics of agrifood system.

### **General overview on the agricultural sector**

The value of agriculture production in 2004 was R-71 billion (10 billion Euros), contributing to GDP by 3,4%. Since 1965, the nominal annual agricultural growth has been 11,5% per annum,

while the economy as a whole grew by 14,4% per annum. It resulted in a drop in agricultural share of GDP from 9,1% in 1965 to 3,1% in 2003 (NDA, 2005) .

Despite this phenomenon, agricultural production remains a crucial sector in South Africa economy and an important engine of growth for the rest of the economy. It provides substantial employment especially in rural areas. There are about 940000 farm workers, including seasonal and contract worker, adding to at least 1,3 million smallholder households, for which farming constitute a full or part time employment. It is currently estimated that 6 million people depend on agriculture for their livelihood. Agriculture is South Africa's second-largest informal sector employer. Furthermore, the agri-food complex – inputs, primary production and processing – contributes some R124-billion to South Africa's gross domestic product (GDP) and employs 451 000 people in the formal sector. The exports of processed agricultural products amounted to R17.2-billion in 2001.

South Africa is self sufficient in all major agricultural products, and also produces significant excesses of some, of which the best quality is exported. By this way, agriculture contributes at a level of 8% to the country total exports.

### **A dualistic agriculture**

South African agriculture is still highly dualistic, with a large-scale commercial sector and a large group of small-scale semi subsistence farms in the former homelands.

About 60000 commercial farmers own 87% of the total agricultural area, characterized by a highly developed agriculture, and produce more than 95% of the marketed output (Vink and Kirsten, 2003).

On the other hand, about 3 million small-scale farmers, of whom a majority is settled in the communal areas, make up about 13% of the agricultural land area. Their production levels are generally low due to a traditional land tenure system, a lack of physical infrastructure, a lack of credit facilities, a low access to input markets and a high level of emigration of the active population.

Indeed, in most rural households the farmers who remain on the farm are those with the lowest opportunity cost, which is defined by the external labour market which favoured adult man (notably for mines and industry). As a consequence, many rural households are headed by women or pensioners (D'Hease and Kirsten, 2003). They produce food primarily to meet their families' subsistence needs (NDA, 2001).

In these less-developed rural areas of South Africa, which have historically been neglected, agriculture is an important contributor towards food security and rural incomes. Historically, the level of commercialisation has been limited and agricultural activities have tended to be small-scale with a restricted contribution towards the household livelihoods (Lahiff and Cousins, 2005).

### **An export oriented country**

In the 10 years since the end of apartheid in 1994, South African agriculture has evolved from a highly regulated and protected industry to one free from all constraints, unsubsidised by government and highly competitive at the international level. South African agriculture and agribusiness have a number of competitive advantages (world-class infrastructure, low input costs<sup>2</sup> and counter-seasonality to Europe mainly<sup>3</sup>).

Today, South Africa is not only self-sufficient in virtually all major agricultural products, but is also a net agricultural products exporter. For the past five years, agricultural exports have contributed on

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<sup>2</sup> At 1.7 US cents per kilowatt hour, it has one of the cheapest electricity costs in the world. Labour rates are also low.

<sup>3</sup> South Africa is the closest major southern hemisphere producer of horticultural and floricultural products to Europe, and has significantly shorter shipping times.

average approximately 8% of total South African exports. Farming remains vitally important to the economy and development of the southern African region.

The largest export groups are wine, citrus, sugar, grapes, maize, fruit juice, wool, and deciduous fruit such as apples, pears, peaches and apricots. Other important export products are non-alcoholic beverages, food preparations, meat, avocados, pineapples, peanuts, quinces, preserved fruit and nuts, hides and skins, and dairy products. According to 2004/05 export values, the country's main export destinations are the United Kingdom, Netherlands, Zimbabwe, Germany, and Japan.

Nevertheless, South Africa imports rice, wheat, oilcake, deethyl alcohol, meat and edible offal. For the importations, the principal partners are Argentina, Brazil, United States, Thailand and United Kingdom.

South Africa has recently entered into preferential trade agreements with the US (African Growth and Opportunity Act (Agoa)), EU (FTA in 2000: full liberalisation of 95% of South African imports over a 10-year transitional period, while South Africa is to liberalise 86% of EU imports over a 12-year transitional period) and sub-Saharan countries. Under the present SACU (South Africa Customs Union) agreement, participating member countries South Africa, Botswana, Lesotho, Namibia and Swaziland have totally abolished internal tariff barriers.

#### 24. What is the country position and its actions or agreements regarding GI within the international negotiations (external stakes) ?

At this stage the National position of South Africa on GI is driven by the following factors:

- a) Soon after its re-entrance into the international arena after 1994, South Africa became a member of the Cairns Group. During international negotiations this group tends to support the free-trade position and oppose any form of subsidies or trade tariffs. It follows that, during negotiations, this group barter a pro-GI position in favour of market access. Nevertheless, within this group certain countries such as Thailand and Brazil have its own *sui generis* system for non-wines and spirits GI.
- b) During the South Africa / European Union Free Trade Agreement negotiations the EU strongly pushed for the inclusion of its list of GI into the FTA, especially the Wines and Spirits part of it. In addition to South Africa relinquishing names such as Port and Sherry, the EU submitted an extensive list of other Wine and Spirits GI that it wanted to protect. This created an extremely negative public perception regarding GI in South Africa.
- c) Despite its membership of the Cairns Group, South Africa tends to support Non-Agricultural Market Access (NAMA) issues during trade negotiations. This is the result of position bartering and the domestic perception that agriculture is a declining sector and the sought-after economic growth would probably come from the secondary and tertiary sectors of the economy.
- d) This anti-GI position is being compromised by an increasing number of instances of usurpation of indigenous names and resources. This will be discussed in more detail in Section 4 of this paper with specific reference to the role of the Rooibos Industry and the Rooibos Case Study.

#### 25. What are the position and the actions within the country itself regarding GI, regarding the internal debate on national agriculture, rural development (internal stakes) ?

The response to pressures regarding the usurpation of names came in the form of review initiatives and research initiatives. In terms of review initiatives one of the most dominant actions was that launched between four of the nine provinces of South Africa (Western Cape, Eastern Cape, Northern Cape and KwaZulu-Natal). The purpose of this initiative was to evaluate the current protection system in South Africa and to consider its applicability on specific cases. The cases included:

- a) Honeybush Tea.
- b) Klein Karoo Ostrich.
- c) Albertinia Aloe Verox
- d) KwaZulu-Natal Amadumbe

It was found that, from a Provincial perspective, adequate protection is not provided. Subsequent interest was also forthcoming from the National Agricultural Marketing Council (NAMC) with a workshop regarding GI that was held on 24 November 2006 in Pretoria. Since then individuals from the NAMC attended training on GI in Geneva, Switzerland and the concept of GI are being included in the regular newsletter of the NAMC.

Another of the research projects on GI is a multi-stakeholder (Universities, Research Institutions, Government Departments) and multi-country (South Africa, Namibia, France) Duras-funded Project as well as the Biodivalloc project. The Project Duras (Promotion du Développement Durable dans les systèmes de Recherche Agricole du Sud) is a project funded by the French Ministry of Foreign Affairs. It aims to contribute to strengthening the involvement and enhancing the scientific potential of southern stakeholders in agricultural research for sustainable development. One of the projects funded under this initiative is a project with the title "Linking farmers to markets through valorisation of local resources: the case for intellectual property rights of indigenous resources". As part of the Southern African Geographic Indicator project, eight key activities are being conducted. These activities range from the evaluation of the institutional framework, through the development of a list of potential products to the analysis of a number of case studies. These case studies are:

- a) Rooibos Tea (South Africa).
- b) Honeybush Tea (South Africa).
- c) Karoo Lamb (South Africa).
- d) Camdeboo Mohair (South Africa)
- e) Swakara pelts (Namibia).
- f) Tsammas (Namibia).

It is interesting to note that the debate on GI in South Africa has developed from two aspects. On the one hand a very strong debate and certain initiatives have developed around protection of indigenous names from usurpation. At the same time another debate has developed around biodiversity and the protection of the environment. In the case of the Rooibos Industry these two approaches has come together in the development of a GI. In other cases, such as that of Sandveld Aartappels (Sandveld Potatoes) an approach to preserve the biodiversity of the region has led to certain codes of practices. Due to the existing reputation surrounding Sandveld Aartappels the recent development of a biodiversity code of practice make this an excellent example of a potential GI in the future.

## 26. Institutional structure to promote GI

It has been argued in Section 2 that the Institutional Structure for GI in South Africa rests on two legs. On the one had there is a formal indigenous system for managing and certifying the link between wine and its specific environment that was created with the establishment of the Wine and Spirits Control Act in 1970 (Act 47 of 1970). This system was refined with the establishment of the Liquor Products Act of 1989 (Act 60 of 1989) and it provides for a statutory body, the Wine and Spirits Board, to develop policy and the appropriate systems. The actual administration of the system has been delegated to the South African Wine Information and Systems (SAWIS). This is a Company Not For Gain and part of the wider South African Wine Industry Council System. SAWIS is employing about 70 people and is responsible for certification of the Product of Origin System as well as Information regarding the Industry.

However, in the case of non-alcoholic agricultural products there are no formal institutional structure other than provided by the combination of consumer protection and unfair competition laws and the Trade Marks Act. Nevertheless, recent interests from four Provinces and the National Agricultural Marketing Council provide the vestiges of institutional infrastructure that can be created.

## 27. GIs current situation, emerging profile, main trends

### 27.1 Current situation and profile

Concerns and interests in products of origin are arising in South Africa. But as stated by Sofia Burger (2005), “*Harnessing geography as a marketing tool in South Africa is in its infancy.*” Some examples of agro-food sectors where products relate to their place of origin are as follows:

- a) The Klein Karoo ostrich case. It clearly draws its reputation from the specific area of the Klein Karoo.
- b) The Drakenstein olive industry, which has clearly developed a quality products but do not properly valorise the link to the specific place where the olive is produced.
- c) Other examples can be cited. Quoting Burger (2005) “*The boland olive oil or waterblommetjie industry come to mind, as well as the Sandveld potato industry, the Rooibos tea industry and the sultana industry.*”
- d) According to Mendes (2001), “*Potential local GIs include Karoo lam, Elim Salami, Grabou Boerewors, Rooibos tea, Honeybush tea, local specialised cheeses, Knysna oysters, fruit of origin, West Coast muscles amongst many others.*”

Some examples of existing and potential GI in South Africa is provided in the following table:

Product	GI Status	Product type	Peculiarities
Alcoholic products	Currently registered: <ul style="list-style-type: none"> <li>• 3 Geographical units</li> <li>• 5 Production areas</li> <li>• 21 Districts</li> <li>• 56 Wards</li> <li>• 129 Estates</li> </ul>	Wine from grapes	Administrative system totally different from non-alcoholic products.
Honeybush Tea	Investigated as part of Duras Project, product specification in process of being developed.	Herbal Tea	Small and new industry. Practices not embedded yet and four different cultivars used for production. Quality varies widely.
Karoo Lamb	Investigated as part of Duras Project, product specification in process of being developed.	Mutton or lamb	Wide area of production. Taste of lamb linked to vegetation – linked in turn to specific substrate. No representative body.

Product	GI Status	Product type	Peculiarities
			Debate on the borders of the Karoo.
Camdeboo Mohair	Investigated as part of Duras Project, currently registered as trademark.	Hair from Angora Goats.	Trademark owned by non-representative body that drives the process. Debate on the borders of the Camdeboo.
Swakara pelts (Namibia)	Investigated as part of Duras Project, currently registered as trademark.	Pelts from Karakul sheep.	Swakara Trademark owned by Namibian Karakul Board. 70% produced in Namibia, balance in Botswana and South Africa. Pelt as a GI?
Kalahari Tsammas (Namibia)	Investigated as part of Duras Project.	Indigenous watermelons	Traditionally part of indigenous way of living. Representative organization?
Klein Karoo Ostrich	Investigated as part of Duras Project, currently registered as trademark..	Meat from Ostriches	What is the link to the area? Trademark owned by one organization.
Albertinia Aloe Verox	Investigated as part of 4 Provinces Project.	Juice from the leaves of the Aloe Verox plant.	Two competing processors, no representative body.
KwaZulu-Natal Amadumbe	Investigated as part of 4 Provinces Project.	The rootstock of the African Potatoe.	Traditional indigenous product. Highly controversial as AIDS remedy.
Waterblommetjies	Considered for Duras project.	An indigenous type of water crescent.	Small industry, embedded in culture, link to area, but no representative organization.
Elim Salami	Name has become generic	Salami from specific area.	Traditionally produced in Elim community.
Henkries Dadels	Widely used.	Dates from the Gariep River.	Dates from a specific community. Who represents them?
Grabouw Boerewors	Name has become generic	Sausages (boerewors = farmer's sausage).	Made according to a specific recipe. Originally from the Grabouw area, now generically in most supermarkets &

Product	GI Status	Product type	Peculiarities
			butchers.
Knysna oysters	Widely used.	Oysters from the lagoon at Knysna.	Marine product.
Weskus Snoek	Widely used.	Snoek (a type of predator fish) from the Atlantic Ocean at the West Coast of South Africa).	Very traditional, marine product and from a specific region. Whole communities dependent on it. No representative body.
Sandveld Aartappels	Widely used.	Potatoes produced under irrigation from the sandy soils of the Sandveld Region.	Good reputation, biodiversity practices in place, representative organization in place.
Biltong	Widely used.	Dried meat commonly produced from game, beef or ostrich.	Considered a delicacy in Southern Africa and each family has got its own recipe. Who should take the lead? Cross-border product.

## 27.2 Trends and perspectives of GI protection in the country:

It was indicated in the earlier part of this paper that the GI System in South Africa consists out of two very distinct parts. On the one hand a system for wines is in place while the system for non-alcoholic products is fairly superficial. In the case of the System for the Wine Industry more details were provided in Section 22.

In the case of non-alcoholic products, as indicated in Section 5 of the WP2 Country Report, certain initiatives were taken in the Western Cape. Troskie (2000) reviews the specific problems facing the agricultural sector: the instability in prices, the low returns and downward pressures on prices driven by technological changes and the issue of asset specificity. Building upon it, he stresses the need to change the characteristics of the demand function, and identifies product differentiation as a strategy towards turning some agricultural products into niche and luxury products and protecting them. The concern upon affordability and availability of food to poor linked to the expected agricultural price increases with the development of these strategies is balanced against the highest opportunity of exporting high value products and to import cheap agricultural commodities.

According to Troskie (2000), the need for a new legislative framework to protect products of origin other than wines and spirits arises from the gap between the local traditional specialties or unique Western Cape products characteristics and needs for protection on the one hand, and the patent and trademark registration existing framework on the other hand: non-fulfilment of patent requirements and exclusivity of trademark registration with no guarantee of usurpation from cheap imitation under a different trademark.

In the context of protecting indigenous and traditional knowledge, for which GIs are also considered, the unsuitability of patent and trademark is stressed by Laing and Erasmus (2004): "*As the patent system cannot adequately address the need to protect and reward traditional knowledge which in instances may no longer be new as required under patent law), so the trade mark system (and the provisions in TRIPS on the protection of GI's) cannot adequately protect GI's which are traditional in themselves, but may no longer pass the test of distinctiveness due to customary use*

*around the world."*

Furthermore, according to Laing and Erasmus (2004) the approach adopted by South not to provide a separate register for geographical indications and to provide protection to GI under its trade mark law predominantly *"confuses two separate intellectual property rights which should be treated under separate laws."*

The 'Elim Salami' small-scale farmers case reported by Mendes (2001) highlights the weaknesses of the current system for protecting farmers whose production reputation is associated to a geographical area. To benefit from the notoriety of this product, a butchery in the area is using this name to commercialise its products. Farmers from Elim are not receiving any benefit from it as their name was never protected. Their only recourse would be to take those using their name to court for fraud. But they will then have to prove it, which can be extremely expensive. Even if this group of farmers would decide to protect their name through a collective trademark, they would still have to demonstrate the fraud in case of usurpation of their name. They would also need to ensure the credibility of their mark and to define a coordination mechanism.

Regarding the proposal for the Western Cape system of certification for the designated products of origin and special character, Mendes (2001) stresses the importance that the system be internationally recognised if it is to be successful in entering export markets.

Furthermore, Mendes and Troskie (2001) argue that the differentiation of agricultural and food products through a legislated system of GI similar to the European one would probably open further opportunities for trade for South African products on the European market, their main export market. Mendes (2001) as well as Troskie (2000), while recognising the possibility not to follow this path, put emphasis on the provision made by the European Union regulation for products of origin from third countries. Referring to article 12 of the EC regulation 2081/92, Mendes (2001) discusses the issue of gaining third country status. She points out the importance of the law to be Euro compatible to create an environment for reciprocity and increase the chances of being added to the third country list. According to Troskie (2000), this would place the recognised third countries products of origin in a position to get a premium on European markets and to benefit from the publicity campaign launched by the EU to inform consumers on products of origin.

Mendes (2001) also recognises the implication of mutual recognition for South African products but according to her, *"South Africa would loose the use of the name of only one significant local product, namely 'Mozarella', which is protected in terms of EC 2082/92 on products of Specific character."*

The development of a system on products of origin is argued by Troskie (2000) to contribute to the objectives of the African renaissance, named after the European renaissance, which consist in the reawakening of African thought and awareness. It is expected that this system will contribute to the economic recovery of rural areas where products of origin are grown. *"Food is an important part of our cultural heritage. Therefore, by building cognisance of our traditional agricultural products an awakening and awareness of our cultural heritage will be created. In so doing the vision of an African renaissance is supported."* (Troskie, 2000)

Mendes (2001) builds upon the European experience, among others the Parmigiano Regiano case, to highlight major features and success factors of existing specific GI system: producer-motivated system strongly backed by public institutions and regulations, long history and tradition of the GI products, specific practices, guarantee provided to the consumers. These different aspects that contributed to GIs being a way of preserving local and traditional products that would otherwise be eliminated due to lack of competitiveness have been carefully reviewed in the process of drawing the legislation on products of origin for the Western Cape.

Salient aspects of the proposed legislation are presented by Troskie (2000), among which the fact that only groups can apply for registration and the proposal to establish an independent Board to receive, evaluate and reject or accept applications.

Troskie (2000) examines the roles the provincial government of the Western Cape could play. From the potential roles that range from regulating, promoting the products to creating a favourable facilitating framework, the last is pointed out as the most relevant.

A list of principles that an appropriate framework would have to adhere to is provided in Troskie (2000) as quoted thereafter. *"It must be:*

- (a) Empowering and voluntary by nature.*
- (b) Not exclusive, but must be open to any individual who wish to join.*
- (c) Protecting traditional specialities and unique Western Cape agricultural products against imitations, both locally and abroad.*
- (d) Not a liability to the limited Provincial Treasury.*
- (e) Credible in a global context.*
- (f) In line with similar systems abroad to ensure the maximum global recognition."*

The organisation structure of the proposal for a 'Products of Origin System for the Western Cape' is described both in Mendes and Troskie (2001) and Mendes (2001). It is designed to fulfil the requirements to get third country recognition by EU. According to Mendes (2001), *"the system would work as follows:*

- an independent board would be set up*
- groups of producers would apply through their newly formed planning and coordination committee*
- rules for production and marketing would be assessed by the Board in cooperation with producers*
- a final set of rules would be agreed upon*
- this will need the minister's approval*
- an approved certification organisation would be selected by the producers to set up a control system*
- the certification organisation will handle disputes but also have the authority to exclude those that are not compliant*
- the Board has the right to prosecute and fine those that break the law*
- a common symbol is still to be considered."*

### 27.3 Relation between country and case:

It was argued in Section 24 that the official South African international position is fairly negative, for specific reasons, regarding GI. However, this position is in the process of being eroded *inter alia* as a result of increasing examples of usurpation abroad. The most prominent and influential of these examples is that of Rooibos and the reasons behind this statement will be discussed in more detail in Section 41. Some other examples of the local reputation of products being expropriated and misused locally and abroad include:

- a) Hoodia
- b) Biltong
- c) Karoo Lamb
- d) Grabouw Boerewors
- e) Elim Salami

Hoodia is a succulent that is endemic to the desert regions of South Africa, Namibia and Botswana. Certain variants of Hoodia was traditionally used by the San people to still their hunger during hunting trips and this dietary suppressant characteristics of the plant led to immense interest in it. The South African Council for Scientific and Industrial Research (CSIR) identified the active ingredient of Hoodia and patented it as P57. This patent was subsequently sold to Phytopharm. Although the CSIR entered into a benefit sharing agreement with the San people, a number of issues remain. These issues include the representation of the San people, the nature of the benefits

being channelled to them, products being sold abroad as Hoodia without containing any Hoodia (and so damaging the reputation of Hoodia), wild growths of Hoodia being over exploited despite the fact that hoodia gordonii is a CITES registered plant, etc.

### **3. Product Data Card**

The Rooibos Data Card is provided as an attachment to this Document.

### **4. Specific working hypothesis for the case study, and relevancy with regards to the Siner-Gi project**

#### **4.1. GI profile :**

In order to understand the relevance of the Rooibos case study and its maturity, it is important to understand the recent history of Rooibos and its role in the intellectual property awareness of South Africans. The essence of the case is that Forever Young, a South African Company specialising in pharmaceutical and skin care products, registered the "Rooibos" trademark on 12 August 1992 in the United States (USPTO, 2004). When the owner of the Forever Young neared retirement age, she sold the Rooibos trademark in 2001 for \$10 to her long standing US business partner, a company with the name of Burke International (Cape Argus, 2005). Although cancellation procedures was started by Rooibos Ltd (the major Rooibos processor in South Africa) soon after the registration by Forever Young (USPTO, 2004), the whole problem only reached the front pages of the popular press in South Africa when the Wupperthal cooperative (representing the resource poor farmers in Wupperthal) ran into legal problems while exporting their product to the US. During the process Burke International claim to have spent quite a considerable amount (\$250 000) on policing and protecting its trademark (Tralac, 2007). However, probably one of the most insulting incidents was when Burke International demanded royalties from South African companies for using the term Rooibos in the US (Sunday Times, 2004). Further, it must be remembered that Burke International use Rooibos as an ingredient in their skin care products with the result that their imports of Rooibos amounts to less than 1 ton per year. Fortunately (from a South African perspective) a number of the coffee houses in the US wanted to sell Rooibos and thus joined the litigation process (Cape Argus, 2004). The case has since been settled out of court following a ruling in February 2005 by a district court in Missouri in favour of a US company (Republic of Tea) (Tralac, 2007). Nevertheless, this was done at the cost of about \$1 million for the Industry.

Partly as a result of this specific case some realisations took place in South Africa. These include:

- a) South Africans should not only be afraid of other countries trying to protect their own, but also have a heritage that is at risk.
- b) The cost of the case represented quite a substantial amount for a small industry.
- c) Who should protect the heritage? Is that the function of government or of the (private) role-players in the industries? This is especially a problem for the smaller industries without a substantial economic base, multiplied by the number of countries where protection is sought.
- d) It is necessary to embark on a serious quest in search of solutions.
- e) Even South Africans cannot be trusted, but may for financial or other personal reasons exploit the collective heritage if it is not protected adequately.

One of the results that came out of this whole case is the establishment of the South African Rooibos Council (SARC). Although it is still in its infancy, it represents the whole industry (small and commercial producers, labour, processors, etc.) and is an ideal vehicle for collective action.

One of the four key strategic objectives of the SARC is to protect the Rooibos name for the industry and to ensure that the name is not expropriated again. To this end a Task Team was appointed by the industry at its Annual General Meeting of 11 October 2006. This Task Team consists out of a representative from processors, marketers, commercial farmers, emerging farmers as well as a representative from the NGO environment. It is actively supported by researchers from the Western Cape Department of Agriculture (Provincial Department), the University of Pretoria, CIRAD and Cape Nature (the Nature Conservation Parastatal of the Province). At its most recent meeting the decision was taken to activate the legal proceedings to ensure the appropriate local protection and a local Law Firm was mandated accordingly.

#### **42. Stakes: What are the main stakes for this case study ?**

In addition to the intellectual property issues discussed above, another major factor influencing the debate is the evolution of the production practices that constitutes a strong stake from an environmental point of view. This is especially perceived as a threat to biodiversity. Issues are raised due to the expansion of the cultivation area and to the intensification in practices. The need to tackle collectively questions of sustainable cultivation practices and to define production rules is more and more perceived by the industry, which is benefiting from the support of the conservation society - Cape Nature and the Great Cedarberg Biodiversity Corridor. The result of this concern is that, in addition to the development of biodiversity best practices, the core biodiversity elements are being incorporated into the product specification for Rooibos.

It should be noted that areas selected for rooibos cultivation are frequently the original habitat of the locally endemic sub-species of *Aspalathus linearis*. Transformation of these lands for cultivation of Rooibos leads to the loss of Rooibos diversity.

Closely related to the pressure on the Rooibos habitat is the uncontrolled wild harvesting of Rooibos. Hansen (2006) argues that resilience of any species to changes in its physical environment is enhanced by diversity. *Aspalathus linearis* (Rooibos) demonstrates high levels of diversity within the species, and occurs in a wide range of habitats characterised by widely differing rainfall and temperature regimes. Two differing reproductive and survival strategies characterise plants adapted to differing habitats: those adapted to wetter habitats characterised by taller, denser fynbos tend to grow vigorously, and produce prolific amounts of seed before dying at an age of between 10 and 20 years. Fire events lead to mortality, followed closely by germination of seed from previous seasons that have lodged on or just under the soil surface. Sub-species with this characteristic are classified as “reseeders”. On the other hand, sub-species adapted to dryer, hotter habitats characterised by shorter and more open fynbos tend to be slower growing, and to produce far smaller amounts of seed in any one season. Following a fire event these plants will re-sprout from the root, drawing on the nutrients stored in their ligno-tubers. Resprouters are known to be longer-lived, and some are known to live for over 50 years. Uncultivated “wild Rooibos” is known to be more resistant to pests, diseases and drought than the cultivated Nortier variety. In part this has to do with its location in and amongst the fynbos, but in the case of the re-sprouters it also relates to its slower growth and a different reproductive strategy. The carbohydrates stored in the lignotubers of re-sprouters enable them to survive greater climatic extremes than the reseeders. With the reality of climate change, and the rise of pest and disease problems in the industry, conserving the incredible diversity of this genetic resource will provide a wider range of options for maintaining production in the future. As future temperatures rise and rainfall decreases, the wild Rooibos may be the only viable source of tea in some areas. For these reasons, conservation of the genetic stock of wild Rooibos, and its natural environment, is an economic necessity for the industry.

The Rooibos growing in the fynbos constitutes both a threat to this highly diverse biome (cleaning of land) and an opportunity to valorise indigenous resources. GI is meant by the industry and Cape Nature who is supporting the process to play a role in promoting sustainable practices.

In the South African context, another extremely important element relates to the social history of the country and the social and economic exclusion of certain parts of society. The result is that a significant part of the production and processing capacity for Rooibos is concentrated in the hands of certain groups with the result that it impacts on the relations between resource poor farmers and commercial farmers and that the power in the industry is captured by the elites. Even if a certain number of resource-limited small scale farmers have succeeded in penetrating markets through alternative marketing channels, their equity participation is still lacking inside the industry, due to their financial and land constraints but also to their isolation with respect to the rest of the sector and their small volume of production with respect to the big companies. The irony of the situation is that, due to South Africa's stringent recent equity laws, their positioning in the fair trade market could be challenged by the recognition of large rooibos plantations as fair trade certified. Rooibos constitutes the main resources of these two communities of small-scale farmers. With the support of NGOs, they have been integrating almost all the steps of the supply chain, producing high value products and creating jobs. In September 2006, they have inaugurated a 'rooibos heritage route', a touristic route based on the idea of the touristic wine routes, some of these routes being famous in the Western Cape. This initiative, which could trigger interesting territorial dynamics, has been developed by two of these communities (those at Wupperthal and Heiveld), and questions arise as to how it will be articulated with the rest of the industry. In the case of the bigger industry individual touristic strategies have been built around rooibos (e.g. guest houses advertising being rooibos farms and organising visits of the tea court), but not yet a collective or territorial one.

Development and equity issues are central in Rooibos industry and GI development is to be thought in interaction with these issues: Rooibos production involves both commercial and resource poor farmers; Black Economic Empowerment in the agricultural industry, land reform, Fair Trade. One of the objectives of the current government is to redress the inequalities of the past. To this end certain policies, targets and associated measures has been put in place. One of these targets is the transfer of 30% of currently white-owned land to previously disadvantaged individuals by 2010. This would not only bring a new dimension into the ownership of collective intellectual property (such as GI), but also lead to clear socio-economic benefits. Hansen (2006) argues that adding value in South Africa would create jobs, facilitate BEE and increase profitability throughout the industry. This could be fed back into the generic marketing story for Rooibos.

The case for the protection of the Rooibos name is clearly emblematic for South Africa. Rooibos is considered to be part of the South African patrimony and a significant part of South African people are aware of the legal battle that took place in the USA. Although it is one of the very important indigenous products of South Africa, it is definitely not the only one. The usurpation of indigenous names and products by locals and foreigners is increasingly being experienced.

Yet, Rooibos is currently the only case that the authors of this report are aware of that has formally taken steps towards developing a GI in South Africa. It is to a certain extent playing a role of pilot case to see how GI could be developed in South Africa and a role model that may be followed by other industries. Part of this is the role of lobbying that the industry is playing towards the government and in particular the Department of Trade and Industry for the development of an appropriate institutional framework. It is important that this is not only suitable for domestic conditions, but also recognized internationally.

As briefly described, different collective and territorial issues are becoming important at the industry level, especially on the need to codify practices. The recent idea of developing a GI has appeared to constitute a relevant framework for discussion and negotiation around these issues.

Interestingly, many of these issues arise with the expansion and development of the industry whereas many GIs in Europe have been set up to protect specific declining industries.

It is important to re-iterate that to date no GI has been established in South Africa. Protection of the name Rooibos is seen as an important issue for the industry and for the country as Rooibos is seen

by the South Africans as part of their national patrimony.

The originality of this case can be summarized in the following points:

- a highly specific plant mainly cultivated but also still harvested from the wild;
- GI reflection is developed after other qualification devices have been put into practices and thus, GI specific stakes and roles, and possibility for complementarity, can be better defined and/or more delimited;
- The dual features of the agricultural sector characteristics of South Africa that can challenge collective action and enhance the need for devising inclusive devices;
- the linkages with the policy process around GI engaged by the four provinces departments of agriculture, and supported by the IPR DURAS project.

**43. Type: For the Siner-GI project, is this case study a core case study; a satellite case (to be compared with another); or an additional case (based on analysis of existing documentation) ?**

For the purpose of the Siner-GI Project this is considered to be a core case study

**44. Hypotheses: Are there any specific working hypotheses for this case study? (**

**45. Methodology : Are there any Case-related specificities**

The main researchers that are involved in reporting this case study are among the key role players that are facilitating and supporting the process of establishing a GI in the rooibos industry.

Significant secondary information is available regarding the rooibos industry on the South African territory, with two accessible sector reports, and collecting primary information is not a huge concern. More specifically, some of the mayor sources of information include:

- a) Crop profile prepared by ASNAPP (ASNAPP undated).
- b) Sustainability report (Hansen, 2006)
- c) Subsector Study (Snyman, 2007)
- d) Sector Development Report (TISA, 2004)

However, accessing information on the export market and understanding the relationships with downstream players on the export market revealed much more complicated. Information on customers and the nature of the transactions are typically considered as strategic information and are thus most of the time seen as confidential. With the support of the University of Edinburgh and the University of New Castle, some information could nevertheless be gathered. This information is available in Arnold *et al* (2007).

## 5. The GI system today <sup>4</sup> : definition and delimitation

(anatomy)

[ Only additional data, not included above in the Data Card.

Do not answer to questions which are not pertinent for your case ]

51. Introduction: General features of the production and marketing systems for the product under study (considering the product in general, not just the GI segment)

*Aspalathus linearis* is one of 278 species within its genus. High levels of morphological variation within *Aspalathus* have been reported in the literature. In the case of rooibos, the range of variation is easily observed in wild *A. linearis* populations throughout the natural distribution area of the species (Dahlgren 1968, Stassen 1989, Van der Bank 1999 and Van Heerden 2003). Historical studies have offered limited but significant insights into the infraspecific taxonomic classification of wild rooibos biotypes. Dahlgren (1968) ascribed these variations to differences in geographic locations.

Traditionally gathered in the wild, rooibos is nowadays mainly cultivated. It has a long history related to a specific territory: the first processing stage, which also takes place in the region of cultivation, still mainly relies on traditional methods probably tracing back to the Khoi and San populations over 300 years ago. Rooibos cultivation practices have been developed over the last century by the different settled populations. It is now strongly associated with the landscape of the Cedarberg region and is a key element of its identity. Rooibos has become a South African heritage.

Rooibos is considered to be a good substitute for black teas and coffee, not only due to its health benefits, but also due to its versatility and variety. A wide selection of flavoured Rooibos products is available. Often Rooibos is used as a basis for other herbal or fruit teas and can be found in ready-to-drink (RTD), as well as self-brewed, iced-teas. Rooibos is packaged in, and available as, loose leaves, various tea bags and powders, ready-to-drink products, cosmetics and shampoos, in tins, glass, tetra-packs, cardboard boxes, cans and bottles. New innovative product application includes green (unfermented) and organically produced Rooibos.

Wild rooibos that is harvested for consumption may be categorised into four morphological types:

- Suid Bokkeveld: “Veldtee”, a voluminous resprouter described in the PCA as the shrub form;
- Wupperthal: “Langbeentee” (Long-legged tea) or “Regoptee” (Upright tea), a re-seeder (erect form)
- Wupperthal: “Ranktee” or “Rankiestee” (Creeper tea), a sparse re-sprouter (prostrate form); and
- Biedouw Valley: “Boomtee” (Tree tea), an erect re-seeder (tree type)

52. Definition of the GI Product:

<sup>4</sup> According to the characteristics of the case study, authors may choose to describe either the GI system, or (if the system is not established as a system) the “GI initiative”.

For the purpose of the accepted product description *Aspalathus linearis* is defined as including the sub-species that occur in the broader area of the Cederberg where *Aspalathus linearis* occurs naturally (as described by Ginsburg), and traditionally used for the production of the tea. This includes the Nortier variety and other wild sub-species traditionally used for the production of Rooibos.

Turning to cultivation practices, a specific know-how, mainly possessed by coloured people, is associated with seed collection. Know-how and practices associated to the processing stage are widely shared inside the South African industry and can thus be considered to be quite generic in this country. However, specific qualifications are associated to the function of the 'tea master'. Furthermore, rooibos farmers and processors have developed specific know-how in relation with the blending of rooibos teas from different plots and different cultivation, which are associated with their capacity to assess and manage rooibos quality. Indeed, tea from the different production areas is normally blended to meet demand and realise a consistent quality.

As part of the process in developing the GI, the following practices have been accepted as a minimum:

The main elements of the agreed upon production practices include:

- a) Production must take place in the delimited area.
- b) Biodiversity standards are being developed. The reason for this is that due to wild harvesting, production expansion and changes in the crop patterns, biodiversity and the well being of natural resources are under threat.
- c) It must be produced under dryland conditions.
- d) However, irrigation is allowed on the condition that no irrigation takes place within the two months prior or during harvesting.

The third leg of the product specification is the harvesting standards. Only two important elements were identified, namely:

- a) It must be annually harvested.
- b) At least 20% of the leaves must be retained.

Probably the most important part of the product specification, and also the part containing the most sensitive elements, is the processing part of Rooibos. The main elements include:

- a) It must be delivered to the tea court within a specified time.
- b) The green material must be cut to a specified length.
- c) It must be placed in a specified manner in the sun and wetted to aid fermentation.
- d) The leaves must be bruised for fermentation.
- e) No catalysts may be added to the product in order to facilitate fermentation.
- f) Odour and colour codes have been agreed upon for the fermented product.
- g) Following the fermentation the product must be spread in the sun for drying. Due to the specific harsh conditions in this area, the exposure to the sun provides a further link to the specific delimited area.
- h) It must be dried in the sun to a moisture content of less than 10%.
- i) It must be stored in a cool, dry place.
- j) All health regulations must be adhered to.
- k) The tea court itself must be in the delimited area.

The total sales of Rooibos have increased from 3 900 tons in 1990 to 4 300 tons in 1996. However, since 1998 (5 100 tons) total sales has increased dramatically to the 10 400 tons of 2003. This increase in sales has to a large extent been driven by an increased export demand. Exports has increased from the 432 tons in 1990 to the 6 400 of 2003 while domestic demand has remained fairly constant in the 2 900 to 4 000 tons band over this period.

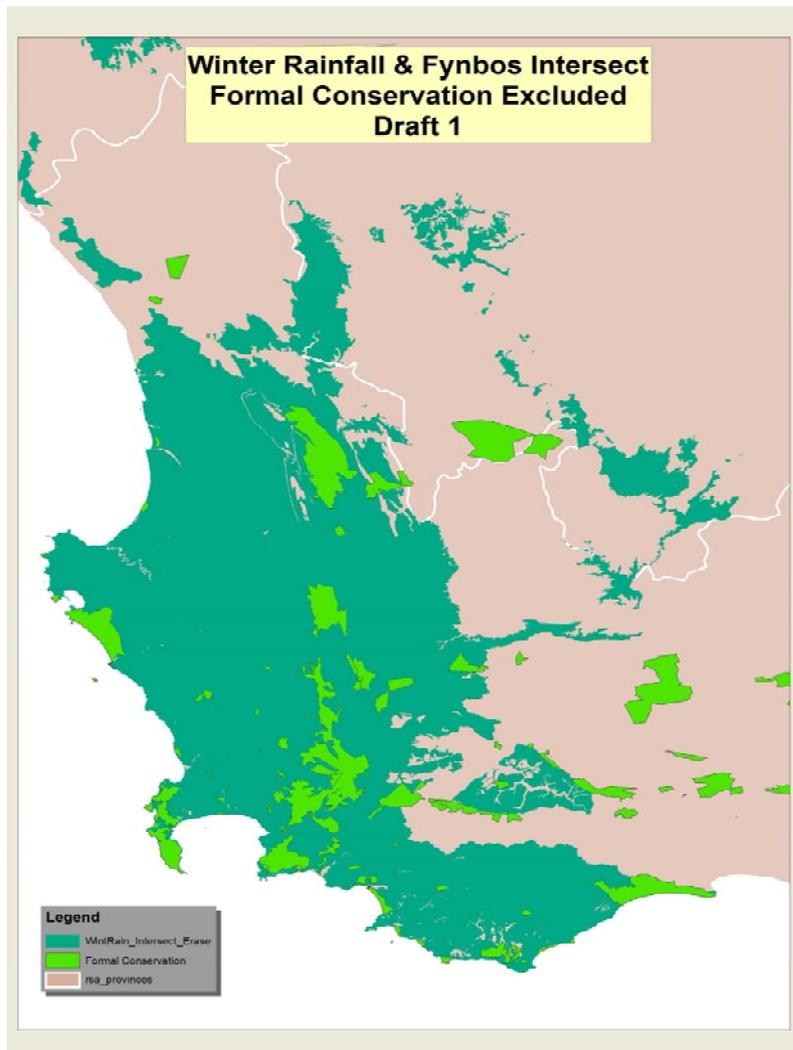
### 53. Description of the geographical territory / Area of production

Approximately 36,000 ha of Rooibos is currently planted in the Western Cape and in the Southern part of the Northern Cape, mostly in the Great Cedarberg Biodiversity Corridor, which is an area of high biodiversity and scenic beauty. The rooibos area has grown dramatically from the 14,000 ha that were planted in 1991. The current Rooibos footprint is 60,000 ha as crops must be rotated with a minimum rest period of two years (Hansen, 2006). The Rooibos footprint is expanding to the south-west with major growth taking place in the Redelinghuys (Sandveld) region of the Western Cape. Traditional areas for rooibos production are mainly mountainous areas, which produce the highest grade of rooibos as quality improves with an increase in altitude, higher mineral content in the soil and lower temperatures. The Sandveld area, which is a low lying area, is in general producing the lowest grade with variation depending on the climatic condition (in a dry year, quality in the Sandveld area can substantially improve if associated with good cultivation practices).

The growing requirements for the rooibos are sandy, well drained soil with low pH. Clay must be a minimum of 1-2m below ground i.e. no free water in the root zone (Hansen, 2006). As part of the Rooibos GI initiative, the potential area for the production of Rooibos has been determined by using the following criteria:

- a) It must be produced in the Winter Rainfall Area of South Africa.
- b) It must be produced in the Fynbos biome.
- c) The soils must be a derivative of the Table Mountain Sandstone.
- d) The soils must be deep, well drained, sandy with the ph below 7.
- e) Formal conservation areas must be excluded.

The following is a preliminary map of the area that is based on these criteria:



Areas considered for producing and processing rooibos are the same. The most important processing steps are done on the rooibos farm premise in the majority of the cases. The first processing stage must take place in a short period of time after the rooibos has been harvested.

Regarding the total area to be delimited, there are not much controversies as there is a wide agreement that all area with potential for rooibos should be considered inside the delimited area. Indeed, general concerns are with preventing delocalisation of rooibos production outside the country. As long as primary producers and processors are able to produce rooibos of acceptable quality inside South Africa, their product should be allowed to be called rooibos.

Another reason for considering a wide delimited area is to account for potential and actual climatic evolution and global warming (decreasing rainfall and increasing temperatures) that are likely to result in a significant displacement of the actual production area to the South.

The GI application process being still under way, there are no established criteria to delimited the area yet. However, under the rooibos GI committee, the proposal for delimitating the area is based on the following criteria:

#### 54. Description of the GI system : the actors and their involvement

Based on present situation (2005 or 2006 or 2007 data) and given the case-specific product, production, collective actions and organizations, markets, supporters, public administrators, other institutions, wider context factors :

##### 54.1 GI System delimitation: For this specific case study, who are the actors who:

- are effectively engaged in creating value and improving the strategic marketing position of the GI product by spontaneous individual or organized collective action,
- or are responsible for the activation and reproduction of strategic local resources (natural resources, knowledge..) which make the GI product specific.

Type / name of actor	Function (s)	Which place-based resource (s) they manage ?
1.		
2.		
.....		
x....		

*(A Figure showing the organization of the GI system is welcome ! )*

### ACTION SYSTEM

#### A Production and processing systems

The number of producers of Rooibos ranges between 300 and 450 farmers, depending on the source being used (TISA, 2004; Hansen, 2006). However, no dispute exists that about two thirds of these farmers deliver their crops to one processor, Rooibos Ltd. Snyman (2007) indicates that the second biggest producer grouping is the approximate 40 farmers, who are also shareholders of, Cape Natural Tea Products (Pty) Ltd. Largest independent producer is The Big Five Rooibos Company (Pty) Ltd with its own brand, African Dawn. The rest of the tea is being sold to other processors and buyers, also through annual contracts with a small number marketing their own teas under their own brand names (i.e. Biedouwvalley).

Areas under cultivation ranges from a few hectares to over 5 000 hectares per farm, but these large-scale producers, are in the minority. There are currently 42 Previously Disadvantaged Individuals (PDI) with between ten and 15 of them owning shares in Rooibos Ltd. There are further two Tea Co-operatives with about 100 PDI members (+35 female producers) who are actively involved in Rooibos farming. Each of these cooperatives own 33,3% shares in a Rooibos packing facility in Cape Town (Snyman, 2007). Whilst 20% of the producers accounted for 80% of total annual production, the combined output of the PDI producers, including the two co-operatives, is estimated to be about 2.5% (225 - 250 tons), of which about 50 tons is produced by one PDI Rooibos producer (TISA, 2004).

Commercial producers range from small to large farming enterprises, with most of them also farming with livestock, potatoes and lucerne (alfalfa). About 40 farmers have Rooibos seedling nurseries as sideline business and some farmers are also involved in growing seedlings for other producers. An estimated 40% of all the farmers have experimented with organic production or have implemented organic production principles on some of their plantations. Nevertheless, one tends to find both organic and non-organic production on the same farms. However, it seems as if quite a number of the PDI producers took the opportunities of the market for organic production and fair-trade seriously (Snyman 2007).

According to TISA (2004) the Rooibos plant has a five-year cycle and can be harvested 3 - 4 times per cycle. During the first harvesting cycle (at 18 months), the dry yield is 150 - 300 kg/ha, for the next two seasons 300 - 600 kg and in the fifth year again 150 - 300 kg/ha. A rotational period of 3 - 4 years then follows, with the land being used for small grains such as oats, rye and triticale. Both the plant's lifespan and production capacity have reportedly decreased over the years. This is allegedly mainly due to seed selection practices and the use of the same gene material pool for half a century. The lack of advancement in this regard could have a serious impact on sustainable growth and needs attention. Production growth for the medium term would thus mainly be driven by increased geographical spread, rather than through improved cultivation techniques.

Generally, Rooibos needs only very little additional fertiliser due to the relatively low yield. As the production generally forgoes artificial irrigation, droughts have a severe impact on the establishment of the plant. The risks of dry-land Rooibos farming include rainfall at specific times of the growing cycle, correct growing requirements, and the plant's susceptibility to diseases. As the plants take 18 months to come into production and work on a cycle, the farmer needs to be able to manage cash flow.

Seedlings are planted between June and August, depending on weather conditions. The young bushes are then « topped », which means the tops of the bushes are pruned off, between December and March to promote branching. The first harvest can be expected one year later. As Rooibos plant has a lifespan of four to five years, therefore, to avoid years without production, new crops are planted annually.

Following production, and prior to marketing, the value chain has four main processes, namely:

- First level processing – wet unfermented tea into red brown tea at tea court
- Second level processing – pasteurisation, sieving, dust extraction etc at processing plant
- Third level processing – in-house packing and retail contract packing
- Value-adding manufacturing – instant teas, nutraceutical extracts, ice teas, cosmetics, etc

After harvesting, the Rooibos branches proceed to the *tea court*. This step is also referred to as *primary processing*. This is where the fresh Rooibos is processed into small pieces, fermented and dried. Not every farm owns the required facilities. Those who do not possess their own equipment generally share *tea courts* with one or two other small farms. The drying loss is 3:1 and the average dry yield per hectare is about 300 kg (TISA, 2004).

The processors, also referred to as the *assembler*, also accept wet (non-fermented) tea which they process on their own tea courts. There are currently eight South African companies equipped with the facilities to commence with secondary processing, wherein the tea is pasteurised and sifted. This process is highly capital intensive, with very costly machinery. The minimum set-up costs for a plant with an output capacity of 250 tons per year is in the region of R750 000.. Pasteurisation fees vary between R2.50 - R3/kg depending on contract volumes and agreements. The cost of transport is on average R2/kg (TISA, 2004). However, as a result of the movement of prices in the energy market as well as the potential introduction of a Provincial fuel levy, these costs may change considerably.

Finally, the product is either bagged into sacks to be sold as bulk, or packaged in tea bags, ready for end-consumer's use. The latter is done by *packers*: companies that specialize in end-consumer packaging. The set up costs of a packing plant with a 100-ton capacity are about R1.5 million. Contract packing fees range from R20 – R30/kg and depend on the type of boxes, filter paper materials that are used (TISA, 2004). Most second level processors have also positioned themselves as marketers.

After packaging, distribution, both on a local and international scale, is done by roughly 25 enterprises within South Africa. Most of these enterprises are also involved in business with other natural products, ranging from Honeybush, other herbal teas and medicinal herbs to wine and cosmetics. A *distributor* operates as an independent agent who acts as middleman between producer, processor, packer and buyers. He either sells to local buyers, which can include large national brands, wholesalers, retailers or other distributors, or the distributor exports the tea.

When exporting the product, there is another step involved: the *quality control*. By law, each consignment of Rooibos exceeding 15 kg must be controlled and approved by the *Perishable Products Export Control Board* (PPECB). The PPECB was established in 1926 and it conducts its business in terms of the Perishable Export Control Act (Act 9 of 1983). It has been assigned by the Department of Agriculture to inspect all exports from South Africa in accordance with the Agricultural Products Standards Act (Ac 119 of 1990). However, it is important to note that the statutory powers of the PPECB is limited to exports and domestically traded products do not necessarily be inspected by this body.

### **Labour absorption**

According to Snyman (2007) Rooibos production, especially organic farming is generally considered to be fairly labour intensive. Commercial farms in the area each generally employs between ten to fifteen workers on a full time basis. However, these workers are not all engaged in the Rooibos industry, but also in the other industries on farm. In the case of a Rooibos farm producing a hundred tons of tea, typically five full time workers and twenty to thirty seasonal

workers for six months of the year would be involved in the Rooibos enterprise. In the case of PDI farmers family labour is predominantly utilized. The same applies to wild harvesting.

The same source also maintains that processing plants employ between twenty to thirty employees for each 1 000 tons processed per year. In the case of tea packing facilities between ten and fifteen full time employees are engaged for every 100 tons produced per year.

Should production be increased to potentially between 15 000 and 20 000 ton per annum, employment could grow to 10 000 – 12 000 at capacity. In this case the impact of mechanisation that may occur on larger farms are not considered. It was already indicated that about 80% of exports are in bulk. It follows that increased exports of value added products could play significant role towards job creation (150 - 200 semi-skilled jobs per 1 000 tons through packing alone) in a semi-automated factory environment.

### **Monoculture, multi cropping and part time farming**

Almost all farmers produce additional products, such as vegetables (potatoes or tomatoes) and fruit (citrus), wine grapes or livestock on the rest of the farm. However, due to the fact that the conditions for optimal Rooibos production are fairly specific and the return on irrigated land is higher for other crops, Rooibos itself are being produced as a monoculture crop.

It is important to note that the climate and vegetation in this area is extremely harsh. It follows that alternative sources of income from these lands are very limited. Furthermore, none of the farmers produces honeybush as the latter needs a different type of climate that is found in a different part of the country.

Although farmers tend to diversify on-farm, their major sources of income are still agriculturally based.

### **Processing**

Although Rooibos has been produced for quite some time in the Cederberg Region of South Africa, the Clanwilliam Tea Cooperative was established in 1948. In 1954 this Cooperative formed the basis of the Rooibos Control Board, appointed by the Minister of Agriculture. As a result quality was standardised and improved. However, the corollary was that markets were regulated and prices fixed (Rooibos Ltd, 2007). Although the South African Agricultural Marketing System was only deregulated in 1997 with the aid of the Marketing of Agricultural Products Act (Act 47 of 1996), the Rooibos Control Board already voluntarily deregulated in 1993. Rooibos Ltd was established from the Rooibos Control Board and took possession of all the assets, both physical and intellectual property. Snyman (2007) indicates that many farmers broke away to form their own firms with King's Products (Pty) Ltd being the first to establish a processing plant in 1996.

Today, eight main players are involved in all levels of the supply chain to a small or large extent. Together, Rooibos Limited, Khoisan Tea, Coetzee & Coetzee, Cape Natural Tea Products (CNTP), King's Products, Red T Company, Big Five Rooibos Company, and Maskam Redbush are responsible for an estimated 95% of total annual supply and sales (TISA, 2004) For that reason Snyman (2007) considers them to be the main players in the supply chain.

Each of the key players has unique competencies through which they position themselves with different service and product offerings. Khoisan Tea is the only Rooibos company to be developed by a German investor in partnership with a local farmer. Co-owner Peter Shülke has brought an extensive knowledge of the German market to the Rooibos industry and his role in the growth of this important market has proved invaluable over the last six years. The Big Five Rooibos Company has an edge over the other players in the sense that it only sells tea produced on its own Rooibos estate. Other players such as CNTP, Khoisan Tea and Coetzee & Coetzee have diversified their marketing scope and also offer products ranging from indigenous tea blends to vanilla, raisins and

other dried fruits. CNTP is further very active in small-scale Honeybush farming projects, supporting both the Tea Trusts of Haarlem and Ericaville (TISA 2004)

According to Hansen (2006) the approximate production cost over a 9-year cycle (6 year growing, 3 year rotation) is R13 000 per ha. At an average price of R12 per kilogram for dry rooibos, this means that the farmer must bring in 1,083 kg of rooibos per cycle to break-even. As demonstrated above, this is possible but drought, production landscape, market demand and supply and the exchange rate all impact on the profitability of the industry

TISA Breaks this down into the following key production statistics in 2003:

<b>KEY PRODUCTION DATA:</b>	<b>2003</b>
Establishment costs, excluding land (R/ha)	R1 000 – R1 600
Production costs (R/kg)	R4,50 – R6,50
Plants per hectare	7 500 – 12 500
Plant's current lifespan	4 – 7 years
Average dry yield per hectare over plant's total lifespan	1 500 kg – 2 000 kg

## ***B Markets***

### **Domestic market**

It was argued in the previous Section that primary production involves both commercial farmers (about 97% of production) and small-scale. Most of the small-scale farmers are members of two cooperatives that grow, process and market rooibos mainly for the fair trade market. Rooibos processing is dominated by 8 large companies mainly located in the Cedarberg production zone that collect and transform rooibos, and sell it to intermediaries who market it. Among these processors, Rooibos Ltd detains 75% of market shares, dominating in particular the national market through National brands group. It is important to note that Rooibos Ltd maintained its dominance on the domestic market and supplies about 95% of domestic consumption. However, the recent phenomenal growth in the export market was to a large extent the result of the initiatives from the smaller and more recent entrants. The turnover of the rooibos tea industry was estimated at 180 million Rands in 2004 (corresponding to 22,5 million euros). The export market represents more or less 60% of the production against 40% for the domestic market (TISA 2004).

According to Snyman (2007) the market of Rooibos Ltd is being serviced by the following 5 packer branders:

- Largest is National Brands Ltd, wholly-owned subsidiary of Anglovaal Industries, a JSE listed company
- Unilever SA Foods (Pty) Ltd
- Joekels Tea Packers CC
- CTC/Pioneer Foods (Pty) Ltd
- Vital Health Foods (Pty) Ltd

TISA (2004) estimates that Rooibos Ltd sold close to 4 000 tons of Rooibos to the local market in 2003, which amounts to a local turnover of approximately R60 million (at R15/kg). It has long-term bulk supply contracts with National Brands and Unilever Foods, who, apart from owning the leading Rooibos brands (Freshpak, Liptons, etc) with a combined market share of about 75%, also supply Rooibos to most of the supermarket chains for their house brands. Rooibos Limited further supplies Joekels Tea Packers of Durban with 15% of the Rooibos market and about 5% share of the

black tea market. Joekels has recently bought Rooibos Laager, the 3<sup>rd</sup> largest Rooibos brand in the country, from Unilever Foods and was awarded the brand against competition from several other packers largely because of its innovative BEE strategy. The company has created an incentive trust to finance acquisition by the workers of a 25% stake in the manufacturing side of the Laager business. Joekels also supplies and packs the Rooibos house brand of Shoprite-Checkers.

Snyman (2007) identify the following 4 contract packers service local brand owners and exporters without packing facilities, as well as private label customers (e.g. supermarket brands):

- Tea Blenders Co (Pty) Ltd – specialise in private label services, including herbal and black teas, as well as coffees. National Brands is major shareholder
- Joypak (Pty) Ltd – large variety of products, including coffees, confectionery, toiletries etc
- SA Rooibos Tea Supplies CC – specialise in Rooibos and Honeybush
- Pacmar (Pty) Ltd – only handles liquid beverage packaging e.g. iced and fruit teas

In addition, four of the processors have their own in-house packing facilities and also offer contract packing services, namely Rooibos Ltd, Red T Company, Khoisan Tea, and King's Products. One new Black Economic Empowerment (BEE) Packing Plant, Fair Packers (Pty) Ltd, was recently established in Cape Town and is exclusively for tea from PDI Co-ops for the Fair Trade market (Snyman, 2007).

Snyman (2007) also indicate that there are currently three main manufacturers (Pty) Ltd's specialising in value-added products like extracts, instant powders, flavours, etc. They do not only focus on Rooibos but also products like Honeybush and various other natural products such as Sutherlandia, Buchu, Hoodia etc. These manufacturers are:

- Afriplex (Pty) Ltd
- Benedict Technology Holdings (Pty) Ltd
- Cape BioCeuticals (Pty) Ltd. This is a Joint Venture between Rooibos Ltd, Grassroots (Pty) Ltd and Extra Natural Products (Pty) Ltd

In cosmetics, the market leader is Annique (Pty) Ltd, the Pretoria-based company of Mrs Annique Theron who put the health properties of Rooibos on the world map in the late 1960's. Incidentally, this is also the same company that sold the "Rooibos" name to Burke International and was central in the US case. Generally, Rooibos cosmetics, toiletries, ice teas etc are contract manufactured and thus only forming a small portion of suppliers' operations. Nevertheless, certain basic products such as soaps can contribute a major part to the financial livelihoods of PDI producers and farm workers.

## **Export market**

Snyman (2007) estimates that eighty to ninety percent of total sales are generated via the 8 processors, with the seven smaller ones concentrating mostly on exports. It was already indicated that Rooibos Ltd's share of the domestic market is about 95% and between fifty and sixty percent of the export market. As Rooibos Ltd also holds 45% of the shares in Honeybush Natural Products, it accounts for between fifty and sixty percent share of the total world market for SA herbal teas (Nevan et al 2005). In addition to the other seven players there are between thirty and forty small and medium enterprises throughout the country and mainly involved in export marketing. Examples include Healthwise Foods, Berfin, Just Rooibos and Wings Group. The majority also offer Rooibos cosmetics, other herbal teas, and natural plant products like essential oils and medicinal herbs in their marketing mix.

Today, Rooibos is generally regarded as a healthy beverage, due to its being low in tannin and being caffeine-free (Morton, 1983). These are these health attributes that are considered essential for the continuous growth of today's competitive herbal industry Winterton (1999).

On the international front TISA (2004) indicates that Germany, the Netherlands and Japan accounted for about 90% (5 800 tons) of all international Rooibos sales in 2003. The international buying power is firmly in the hands of these buyers who seem to benefit more financially from this uniquely South African product than the country itself by adding value in their own countries. Furthermore, most of the role players are involved in exporting unprocessed bulk tea, and the largest market for this, Germany, is very price sensitive. In this market segment, the highest level of competition can be found. The group of important buyers is small in Germany, consisting of about 15 to 20 agents and tea traders.

On the export side, four players accounted for more than 85% of annual sales volumes. After Rooibos Limited, the second largest exporter was Khoisan Tea with approximately 15%, followed by Coetzee & Coetzee with about 10% and Cape Natural Tea Products with 6% of the market share. The remaining players together supplied and sold about 1 000 tons of Rooibos. New players will find it difficult to enter the market, because many producers also have shareholding in these established companies (TISA, 2004).

In Table 1 the sales volume and price information for Rooibos is provided. TISA (2004) argues that International demand for Rooibos has been growing by nearly 35% over the past three years alone. It is evident that this would result in serious pressures on the system.

**Table 1: Sales volume and exports of Rooibos**

YEAR	TOTAL SALES	EXPORTS	DOMESTIC	PRODUCER PRICE
	VOLUME (TON)			R/KG
1990	3 900	432	3 468	R1,40
1993	4 200	760	3 440	R3,25
1994	4 100	800	3 400	R4,80
1995	4 200	1 350	2 850	R5,50
1996	4 300	1 400	2 900	R6,50
1997	5 100	1 400	3 600	R3,30
1998	5 100	1 500	3 600	R3,80
1999	5 400	1 800	3 600	R4,80
2000	6 500	3 100	3 400	R5,50
2001	7 530	3 880	3 650	R6,50
2002	8 800	4 800	4 000	R11,00
2003	1 040	6 400	4 000	R12,00

Source: TISA 2004

### **B3. Product qualification and labeling**

Rooibos is sold pure or in blends. The deployed qualification and certification strategies are diverse: fair trade, organic farming, 'wild rooibos tea'. These strategies can support strong differences in prices paid to the producers: in 2005, Rooibos Ltd, which production is mainly conventional (only 15% organic) paid 1,9 € for 1 kg of dried Rooibos while the Wupperthal cooperative, which

production is all organic and valorised through fair trade channels, paid 3€per kg (Leclercq, 2006). But this diversity concerns primarily the export market and is restricted to small niche markets. Most of the export (over 90%) is done in bulk.

### **C. Territorial organization**

TISA (2004) has indicated that the eight major players also own most of the core infrastructure in the form of plants that are either in the Clanwilliam/Citrusdal area, at Graafwater, or in the greater Cape Town metropolitan area. Three of them also have their own in-house packing facilities and offer contract processing and packing services to the smaller marketers.

Hansen (2006) reports that a Rooibos Ecotourism Route is in the process of being developed through the Greater Cederberg Biodiversity Corridor (GCBC). It will feature biodiversity and scenery, adventure activities, cultural activities, Rooibos products and the people of the region. Ecotourism represents 40-60% of the global tourism industry, and is one of the fastest growing categories within the tourism industry. Ecotourism and adventure tourism have been identified as important growth areas within the Western Cape tourism sector. Market the Rooibos Ecotourism Route through all generic marketing promotional materials, consumer promotion competitions, South African Tourism and Cape Town Routes Unlimited. A successful model is demonstrated by Groenkol (Big Five) who receive over 1000 tourists per annum.

## 6. The GI system trajectory

(history)

The discovery of *Aspalathus linearis* by European botanists dates back to as early as 1772. Rooibos tea is an indigenous herb that grows exclusively in the Northern and Western Cape provinces of South Africa, precisely in a small area located 200 km in the North of Cape Town, the Cedarberg Mountain region and around Clanwilliam and Citrusdal. The production of Rooibos is clearly dominated by a small number of processors who collect and transform Rooibos, and sell it to intermediaries who market it. Various qualities of Rooibos are identified according to the production area. The type of harvesting also influences the tea-quality: hand-picked tea is finer. Even if the Rooibos cultivation practices have evolved considerably, its processing still relies mainly on traditional methods developed by the Khoisan populations. The traditional methods consisted in harvesting the wild plants, crushing the leaves with axes and hammers, leaving them in heaps to ferment before drying in the sun. The main difference is that nowadays the methods are more mechanized and refined.

The Clanwilliam Tea Cooperative was established in 1948. In 1954 this Cooperative formed the basis of the Rooibos Control Board, appointed by the Minister of Agriculture. As a result quality was standardised and improved. However, the corollary was that markets were regulated and prices fixed (Rooibos Ltd, 2007) and with a volume-driven bulk sales approach, there was very little value addition or product development. Marketing efforts were predominantly focused on the local market and local consumption accounted for about 75% of annual production. This however, should be seen in the context that the Control Board, through its legal statutes, was not allowed to engage in value-addition and thus restricted to bulk sales (TISA, 2004).

Although the South African Agricultural Marketing System was only deregulated in 1997 with the aid of the Marketing of Agricultural Products Act (Act 47 of 1996), the Rooibos Control Board already voluntarily deregulated in 1993. Its assets were distributed to producer farmers who were former members of the co-operative in the form of shares in the newly formed public company, Rooibos Ltd. This brought an influx of new players onto the market, with operations expanding to the broader Cedarberg area as well as Cape Town. Whilst its impact is clearly visible on second level processing (from one pasteurisation plant to eight), it is especially in the areas of international sales and new product development that the benefits of deregulation are tangible. Since 1998, high-valued niche products such as green and organic Rooibos, ice teas, powdered extracts, new herbal blends and flavours, etc. have burst onto the market and international sales have increased with more than 300% (TISA, 2004).

Several factors have given rise to the development of the GI initiative. From the industry point of view, if rooibos is currently not produced anywhere else in the world, with the increased international demand for rooibos tea, some producers feel there is a threat of possible delocalisation of the production outside the country. Another more immediate threat arose with the registration of trademarks on the name rooibos by different companies in different countries. This resulted in a major legal battle in the United States that made Rooibos famous. The term 'rooibos' was registered there as a trademark in 1994 by a South-African company to draw profit from its exclusive rights in marketing rooibos under this name in the United States. In 2001, the company has assigned its trademark to its US agent. Rooibos Ltd, assisted by the South African Department of Trade and Industry and the Western Cape Government, contested this registration for more than 6 years and had to spend almost 6 million Rand (750 000 euros) in legal fees, before they achieved an agreement with the agent, which recognized officially in June 2005 the cancelling of its registered trademark. This was made possible because the name rooibos was recognized as being a descriptive

generic term, commonly used to refer to the herbal tea derived from the *Aspalathus linearis* plant and thus that cannot be used to design a trademark (TRALAC, 2005; Silver, 2002).

One of the results that came out of the Rooibos trademark dispute in the US was the establishment of the South African Rooibos Council (SARC) in April 2005 as a Section 21 Company. Under South African Law a Section 21 Company is a not-for-profit organisation. The vision of the SARC is “a stable, cohesive and internationally competitive Rooibos industry that will ensure future sustainability to the benefit of all stakeholders (Snyman, 2007: 6). Although it is still in its infancy, it represents the whole industry (small and commercial producers, labour, processors, etc.) and is an ideal vehicle for collective action. One of the key strategic objectives of the SARC is to protect the Rooibos name for the industry and to ensure that the name is not expropriated again. To this end a Task Team was appointed by the industry at its Annual General Meeting of 11 October 2006. This Task Team consists out of a representative from processors, marketers, commercial farmers, emerging farmers as well as a representative from the NGO environment. It is actively supported by researchers from the Western Cape Department of Agriculture (Provincial Department), the University of Pretoria, CIRAD and Cape Nature (the Nature Conservation Parastatal of the Province). This Task Team is close to finalising a product specification that will make provision for quality, traceability and inspection concerns. At its most recent meeting the decision was taken to apply for a Geographic Indicator in South Africa and a local Law Firm was mandated accordingly.

The sustaining increased demand and lack of quality standards on rooibos gives rise to opportunistic behaviors both from South African processors and traders - who need to create their space in a market strongly dominated by Rooibos Ltd - and from European buyers, on export tea quality. A particularly important dimension is the quantity of stick in the rooibos tea, which increases the volume but can degrade the quality and is used in defining different grades. But up to now, these grades are not perfectly shared among the industry. The subsequent risk of degradation of quality, and thus of loss of reputation, is perceived as an important threat by some actors. Furthermore, with the dynamics of innovation in the industry and the huge product range (not only the blend herbal teas but also cosmetics, soft drinks...), it also becomes more necessary for the commercial viability of the industry to make sure that it is rooibos that is used. With the expansion and opening of new markets, need for standardization becomes critical. But with more than 90% of the production sold in bulk and the European market being dominated by a few international tea brokers from Germany, control on overseas markets is very difficult. For this reason the development of an envelope of quality standards is a priority of the current GI initiative.

## **7. GI Governance, joint action, regulation**

**(physiology)**

### **7.1 Organization & networks**

It was already indicated in the previous Section that, in order to counter the void of collaboration, the South African Rooibos Council (SARC) was formed in 2005. The vision of the SARC is to create “A stable, cohesive and internationally competitive Rooibos industry that will ensure future sustainability to the benefit of all stakeholders”. The objectives of the SARC are to:

- Increase market share of Rooibos products nationally and internationally and thus viability, global competitiveness and profitability
- Increase market access for all participants, with focus on promotion of BEE initiatives

- Undertake efficient generic marketing of Rooibos
- Optimise export earnings from Rooibos products through improved farming yields, export promotion, high quality plant material & product standards, and value addition on local level
- Stimulate job creation on all levels of the value chain
- Optimum utilisation of government funding for sector development through inclusive structures and growth strategies (exports, employment & equity)
- Improve sustainable natural resource management

SARC represents the whole industry and the following groups are represented on the Board:

- PDI Producers
- Commercial producers
- Two Processors
- Two marketers and Manufacturers (one each for export and local markets),
- Transformation facilitator.

However, it seems that the main decisions are taken at the processor level.

## 7.2 SUPPORT SYSTEM :

Following the dispute in the United States, interest in developing a GI for the rooibos tea arose both at the sectoral and governmental level. The South African Rooibos Council (SARC) was established in 2005 and the representation is discussed in the previous Section. As this formal organization is still in its infancy, it is still struggling to effectively incorporate the producers from the PDI community effectively into its structures. Until recently, the efforts for organizing and improving coordination among rooibos producers and processors concerned mainly research aspects. However this is evolving with the increased awareness of the need to protect their product and markets and the perceived risks of quality degradation. Furthermore, they are encouraged by public institutions to cooperate; and they are exploring the potential for developing a GI around rooibos. If interest for GIs was already present, actual discussion about it are mainly the results of an action research process that has been undertaken end of 2005 under the coordination of University of Pretoria with the Western Cape Department of Agriculture and the CIRAD. Given its potential and exemplarity, the rooibos industry was selected as one of the cases for which to explore if and how GI could be developed and which institutional and legal framework would be appropriate to support GI development. Given the general lack of awareness and knowledge on GI in South Africa, both locally and nationally, the evolution is framed by the interaction and exchanges between the different stakeholders and the researchers and academics.

So far, regarding the rooibos industry, several information meetings have enhanced the industry interest in GI development, and a GI committee has been established and mandated at the annual general meeting of the SARC in 2006 to debate the GI strategy and define the product specification. This process is currently under way with three important dimensions: protecting the industry against misuse and usurpation of the name, ensuring better control over quality and combining the GI and the biodiversity strategy. The first two points have already been well explored and debated; the third one will be the object of a broad consultative process with farmers from the different areas of production. The committee has been established so as to ensure representativity of the different role players in the industry and has been agreed upon at the last general assembly meeting of the SARC.

The advanced level of differentiation inside the industry, which has up to now been managed through individual or restricted collective strategies, can be nicely complemented by a GI collective qualification. Future prospects could be to consider GI as an umbrella under which could be defined different specifications to account for the different qualities and processes of production. This could

reinforce small-scale farmers' communities, for which market access and differentiation for their production is already well developed. Indeed, their access to market is very dependent on fair trade trends, and communities have potential for strengthening their position in the market by benefiting from the recognition of their specific quality through GIs. Indeed, it is known that the areas of production of these communities offer very good conditions for producing high quality of rooibos. They are settled in one of the best 'terroir' for Rooibos production. However it is worth mentioning that this has not yet been widely discussed inside the industry which is first concentrating on properly establishing a GI for rooibos.

If the GI strategy appears as an interesting perspective for the rooibos sector and is currently being defined through a consultation process based on the GI committee, it will clearly depend on the evolution of the legal framework. Two options arise: i) GI remaining protected as collective or certification trademarks and thus being primarily based on private strategies and initiatives from the industries, with questions related to international recognition; or ii) GI benefiting from a 'sui generis' system with public interests probably being fostered and better capacity for international recognition. The research program is well connected to the policy process and has been instrumental in the evolution of the policy arena from a clear lack of interest or even negative view on GI to a much more open attitude. In this regard, case studies such as the rooibos case are enriching the research process and thus the political debate.

In addition to the need for protection of the name, the clear challenge as perceived by the industry is to ensure better control over rooibos quality and to combine the GI and the biodiversity conservation strategy, rooibos being produced in and attached to a highly biodiverse area. Further important considerations are to foster collective and even territorial dynamics at the level of the rooibos production area that could support the needs for inclusiveness and rural development in a context marked by isolation of the small-scale farmers' communities from the rest of the industry, but also by strong competition among processors.

Beyond the protection of rooibos is the increased awareness that the broad diversity of indigenous products could be lost if no public, collective and proactive action were undertaken.

Specific examples of Government support to the industry include the following:

- Grants from provincial Depts of Agriculture, Economic Development, and Social Services to Wupperthal Co-op for infrastructure & production capacity development (>R1m since 1997)
- Western Cape Dept Economic Development & Tourism (DEDT) provided funding to SARC for key start-up projects (R100 000)
- Rooibos trademark case in USA supported by DTI & DEDT (R1.7m), supplementing the +-R6m contribution by Rooibos Ltd
- DTI-Agroprocessing commissioned a study for developing Customised Sector Program (R20 000)
- Initiative by Western Cape Dept of Agriculture and University of Pretoria to investigate Geographic Indicator registration of rooibos and honeybush (funding via French government).

Other forms of support from organizations include the following:

- Fair Trade organisations offer market access, price premiums and social development premiums. For instance, Fair Trade Original (Holland) as largest trade development partner, invested more than R7million (tea purchases & premiums) in the PDI Co-ops over the period 2001 to 2004
- Non Governmental Organisations EMG, Indigo Development & Change, and ASNAPP offered invaluable skills and capacity development programs to small farmers facilitated through foreign aid (e.g. USAID, United Nations Environmental Program, Worldbank) and local government grant funding, as listed above

- Wesgro, as Trade and Investment Promotions Agency of the Western Cape Province, facilitates market linkages via trade missions, presents export training courses, and develops natural products sector profiles
- CapeNature facilitated grant funding from CEPF (Critical Ecosystems Partnership Plan) to SARC for developing biodiversity strategy (R50 000)
- CEPF supplied grant funding to EMG for a 3-year research program, “Conserving Biodiversity and Enhancing Livelihoods in Small-scale Rooibos Tea Production Areas” (US\$70 000)

## Legal Protection

The dual legal system of GI protection in South Africa has been debated in Section 22. A formal indigenous system for managing and certifying the link between wine and its specific environment was created with the establishment of the Wine and Spirits Control Act in 1970 (Act 47 of 1970). This system was refined with the establishment of the Liquor Products Act of 1989 (Act 60 of 1989). In the case of non wines and spirits, South Africa does not expressly recognize nor provide protection for GIs. Only minimum protection, as required under South Africa’s international obligations, is provided based on the combination of consumer protection and unfair competition laws, the Trade Marks Act. The main elements are more specifically:

- Common law protection exist under passing off and unlawful competition.
- Protection under Trade Marks Act 194 of 1993: Possibility of registration as collective or certification mark
- Protection under Trade Practices Act: “[N]o person shall in connection with the sale of goods, directly or indirectly make any statement or communication or give any misleading description or indication in material respects in respect of the nature, properties, advantages or uses of such goods...”. This Act thus provides some form of protection to geographical indications in that no person is allowed to make false representations as to the properties or nature of a good. As a result the legitimate users of a geographical indication could institute action under this Act if, for example, someone represents his product as having characteristics similar to a well known geographical indication in which reputation has been accumulated.
- The Merchandise Marks Act No. 17 of 1941, prohibits the application of false trade descriptions to goods, and the sale of goods bearing false trade descriptions. It provides that any person who applies any false trade description to goods shall be guilty of an offence (section 6.1). It also stipulates that any person who sells any goods to which any false trade description is applied, shall be guilty of an offence (section 7). Trade descriptions include any description, statement or indication (direct or indirect) as to the place or country in which any goods were made or produced. Trade descriptions therefore include indications as to the place or country in which goods were made or produced, thus providing a measure of protection to geographical indications.

## 8. GI Performance assessment

### 8.1 PERFORMANCE WITH RESPECT TO THE GI STAKEHOLDERS

#### 8.1.1 Central question: Is the GI product less or more profitable than other products, and why so?

The production of Rooibos is fairly specific in terms of the climatic and soil conditions that are required. It follows that very little alternatives exist for Rooibos production. However, over the period 1990 to 2003 the producer price of Rooibos has increased from R1,40 per kilogram to R12,00 per kilogram.

81.2 Central question: Does the GI product bring also other advantages than just money to GI systems actors (farmers, processors, traders, retailers)?

Rooibos is well known for its health attributes. In traditional folklore it was used to treat babies for rash and eczema as well as babies with allergies for cow's milk (ASNAPP, undated: 3). Some of these claims has been confirmed with due to the caffeine-free, low tannin and antioxidant-rich status of Rooibos (Erickson, 2003). It is interesting that Forever Young, the company that registered Rooibos as a trademark in the US, did not export Rooibos as a tea, but as an ingredient in skincare products. It follows that the health attributes of Rooibos, its potential uses, the scientific verification of claims and specifically the conditions of Rooibos' inclusion creates certain pressures on the industry.

81.3 Has profitability of the GI product / system improved or worsened, and why so?

The total sales of Rooibos increased from 3 900 tons in 1990 to 10 400 tons in 2003. Over the same period the average producer price of Rooibos increased from R1,40 to R12,00 per kilogram (TISA, 2004: 11). It has already indicated that the production of Rooibos need specific conditions and will only grow on an elevation higher than 450m, but below 900m above seal level. At the same time it requires annual rain of between 380 to 635 mm per year, preferably in the winter (ASNAPP, undated: 4). Traditionally Rooibos was produced in specific areas of the Cederberg region, but the production area has recently been expanded to include the Sandveld to the South-West of the Cederberg. However, as examples of the Rooibos species has been found in the wild as far south as Bredasdorp (Wallace, 2007), trials are currently being conducted by some of the role-players in the industry. If successful, this would enhance the potential production area tremendously. Nevertheless, the industry wants to limit production to the Fynbos biome of the Winter Rainfall Region of South Africa.

81.4 Are the future perspectives (next 3 years) for the GI producers good or not so good, and why?

Rooibos is the fermented and dried leaves of the plant *Asphalathus linearis* and not from the family of plants (*Theacea*) that normally gives rise to "black tea". It follows that Rooibos is considered as an "herbal tea". According to TISA (2004:2-3), the market for herbal teas has increased by 50% over the period 1997 to 2002 in Britain, 10% in Germany and 4% in the Netherlands. In both Britain and the Netherlands the demand for black tea fell substantially over the same period. This information is corroborated by Arnold *et al* (2007). It follows that Rooibos forms part of a market segment that is growing substantially, and it could be expected that the demand for Rooibos would increase apace. Over the period 1990 to 2003 the exports of Rooibos increased from 432 tons in 1990 to 6 400 in 2003, an increase of 1 381%. Over the ten years from 1993 to 2003 the corresponding increase is 743%. On the domestic market the consumption remained relatively constant with an increase from 3 468 tons in 1990 to 4 000 tons in 2003 (15%) and 16% over the ten year period since 1993 (TISA, 2004: 11). It is clear that not only the increased export demand would create substantial pressures, but that pressure would be exacerbated by the change from a domestically focussed industry to an export industry.

81.5 What kind of innovation process have been and are being introduced , in which part in the process ? (resource management / production / processing / marketing / linking with other cultural social or economic activities ?)

It was already indicated that the development of the South African Rooibos Council (SARC) is the result of the need for closer cooperation. To a certain extent this initiative was driven by the

well known US case. Although the production practices have been well established over time, another major factor was the need for closer cooperation in the field of research at all parts of the value chain. Some of the specific issues that need to be addressed in the system include:

- a) Prevention of name usurpation.
- b) Prevention of early die-back.
- c) Climate change
- d) Moving from bulk exporting to local value adding.
- e) Conservation of bio-diversity.

#### 81.6 Central question: What are the main opportunities, barriers, and threats, and why?

Following the democratisation of the South African society in 1994 and South Africa's subsequent re-entrance into the international arena, the marketing environment for agricultural products was also liberalised through the Marketing of Agricultural Products Act (Act 47 of 1996). Due to the fact that these three events took place in close proximity to each other, the subsequent consequences and impacts are often confused by individuals and commentators. Nevertheless, it is expected of farmers to compete on the international front with very little agricultural support (according to the OECD 2006 the current producer subsidy equivalent in South Africa is 5%) or statutory bodies. At the same time other pressures on commercial farmers include:

- a) Land reform and AgriBEE
- b) Market reform.
- c) Trade liberalisation.
- d) The need for efficiency gains.
- e) The need for product and marketing innovation.
- f) Increased emphasis on food safety and traceability.
- g) National and household food security. In the case of the latter emphasis is put on especially the poorer sections of society.
- h) Preservation of the natural environment.
- i) Climate change and its consequences.
- j) Changes in social structures.
- k) Strict monetary and fiscal policy.
- l) Fluctuations in the exchange rate.

81.7 Are there problems in terms of management potential: salesmanship, leadership and/or craftsmanship, if so: which, and can they be solved? (see §4.2 ...)

At this stage the following problems exist in the system:

- a) There is one major player that dominates the market. This player also gate-keep certain knowledge elements of the past.
- b) There is a certain level of distrust between the various players, both in terms of the history of the Industry as well as the history of the Country.

## 9. Conclusions and recommendations

Here peculiarities of the GI system should be mentioned that do not fit in the Datacard nor under the themes below (A through E) but which are relevant for outsiders to understand the potential and limitations of the GI system, or which anyhow must be taken into consideration when thinking in terms of GI system improvement (following the normative approach).

- Special production cycle (long, interrupted etc.)
- Recent critical events
- Relevant cultural rites, beliefs, religious, ethnic aspects linked to production or consumption
- New lessons that may be learned from this case

Other case specific information ?

lessons

suggestions for further research, tentative policy recommendations for better protection and support (direct as well indirect measures)

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# SINER-GI

## GI Products Database

### Questionnaire version 160407

The orange questions are mandatory, the others are optional

<b>Author(s)<sup>5</sup></b>	Author 1 : Estelle Biénabe et Maya Leclercq	Author 2 : Dirk Troskie
<b>Institution(s)<sup>6</sup></b>	Institution 1 : CIRAD	Institution 2 : Western Cape Department of Agriculture
<b>Institution's website</b>	www.cirad.fr, www.elsenburg.com	
<b>Date of last update</b>	08/06/2007	
<b>1. Product identification</b>		
1.1	Popular name(s) of the product <sup>7</sup>	Rooibos
1.2	Official name(s) as registered (if relevant)	Rooibos
1.3	English name of the product	Red Tea
<b>2. Data on the product</b>		
2.1	What is/are the country/ies where the product is produced ? <sup>8</sup>	South Africa
2.2	Part of the world <sup>9</sup>	
2.3	If federal state : mention the name of the state	Western Cape and Northern Cape Provinces
2.4	Name of the region <sup>10</sup>	Sandveld and Cederberg regions and Southern parts of Northern Cape province
2.5	Area of production <sup>11</sup>	Name Size 400 km <sup>2</sup> Description <sup>12</sup> Part of fynbos biome, mostly highlying areas, rural scattered area

<sup>5</sup> Each author (when there are several) is linked to an institution and the institution's website. Add boxes if necessary

<sup>6</sup> Full name, acronym, country

<sup>7</sup> In the native language, please write in phonetic and roman characters (please write the geographical part of the name, or when appropriate the traditional one, in uppercase)

<sup>8</sup> One country can belong to several parts, and more than one country is possible (e. g. Basmati Rice)

<sup>9</sup> Do not fill in. The part of the world the country belongs to will be automatically generated.

<sup>10</sup> Mention the more relevant administrative (e. g. a French department, or NUTS in European Union) or geographical (e. g. a valley or a historical region)

<sup>11</sup> Names of villages, towns, parts of counties, districts, small regions, etc.. South west of...; indication of the area size

<sup>12</sup> In articular geographical and socio-economic characteristics

2.6	Is the product a food product ?	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
2.7	If NO, which type of non food product? <sup>13</sup>		
	Textile	<input type="checkbox"/>	Wool, leather, animal products <input type="checkbox"/>
	Glass and pottery	<input type="checkbox"/>	Vegetal products (incl. tobacco) <input type="checkbox"/>
	Metal products	<input type="checkbox"/>	Other <input type="checkbox"/>
			If other, which type?
2.8	If YES, which type of food product? <sup>14</sup>		
	Wines and vine-based products	<input type="checkbox"/>	Vegetable (fresh or preserved) <input type="checkbox"/>
	Spirits and liquors	<input type="checkbox"/>	Vegetal oils and fats <input type="checkbox"/>
	Beers	<input type="checkbox"/>	Cereals <input type="checkbox"/>
	Other drinks	<input type="checkbox"/>	Bread, pastry, cakes <input type="checkbox"/>
	Cheeses and milk-based products	<input type="checkbox"/>	Sweets <input type="checkbox"/>
	Processed meat products	<input type="checkbox"/>	Tea <input checked="" type="checkbox"/>
	Fresh meat	<input type="checkbox"/>	Coffee <input type="checkbox"/>
	Fresh fish, molluscs and shellfish	<input type="checkbox"/>	Cocoa <input type="checkbox"/>
	Other animal products	<input type="checkbox"/>	Other vegetal products <input type="checkbox"/>
	Fruit (fresh or preserved)	<input type="checkbox"/>	Mineral products, water, etc. <input type="checkbox"/>
			If other, which type?
2.9	If YES, what is the production period? <sup>15</sup>		
	During the whole year	<input type="checkbox"/>	
	During a limited period of the year (seasonal)	<input type="checkbox"/>	
	In relation with a single harvest per year	<input checked="" type="checkbox"/>	
2.10	Minimal duration of aging/maturation <sup>16</sup>		
	No aging/maturation	<input type="checkbox"/>	
	Aging/maturation less than 1 week	<input checked="" type="checkbox"/>	
	between 1 and 3 weeks	<input type="checkbox"/>	
	between 3 and 8 weeks	<input type="checkbox"/>	
	between 2 and 4 months	<input type="checkbox"/>	
	between 4 and 6 months	<input type="checkbox"/>	
	between 6 and 12 months	<input type="checkbox"/>	
	between 12 and 24 months	<input type="checkbox"/>	
	more than 24 months	<input type="checkbox"/>	
2.11	Description of the product <sup>17</sup>	Rooibos is an herbal tea made from <i>Aspalathus linearis</i> , which is an endemic plant growing in the fynbos biome in South Africa: Rooibos is recognized as a specific product from this country. Rooibos is the Afrikaans word for 'red bush'. It has become a popular tea worldwide, especially appreciated for its polyvalence and health benefits. It is recognisable for its characteristic red colour and sweet aroma.	

<sup>13</sup> Please choose in the closed list

<sup>14</sup> Please choose in the closed list

<sup>15</sup> Please choose in the closed list

<sup>16</sup> The aging period may generally be considered from the moment on when the product is shaped (cheeses, sausages) or basically processed (end of primary fermentation for wines, beers). For some products, several variants can be considered (for example, young or old cheese). In such a case, please mention the name of the variant in the right column

<sup>17</sup> Describe the product the way it is usually consumed: shape, taste, colour, packaging, fresh or processed, preservation, use in cooking, ways of consumption, etc. (10 lines maximum)

2.12	Description of the process (different steps) <sup>18</sup>	1. Harvesting of the Rooibos plants. 2. Transportation to the first step processing place, the 'tea court', generally on farm. 3. Chopping of the stems and leaves into pieces. 4. Enzymatic oxydation of the pieces gathering into heaps with water. 5. Sun drying of the Rooibos. 6. Sifting and sterilization by processors. 7. Packaging.													
2.13	Does the raw material originate from the designated geographical area?	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>												
2.14	If YES, is the geographical origin of the raw material mandatory according to the regulation/code of practices?	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>												
2.15	What features within the geographical area contribute to the uniqueness of the GI product? (10 lines maximum)	Rooibos is an endemic species that only grow in the fynbos area. Rooibos is also only processed in its region of production. Use of the plant as a tea traces back to the indigenous San and Khoikhoi people over 300 years ago. Rooibos has been produced in the area and commercialized for more than a century. The climate optimal for Rooibos is 380 to 630 mm of rain mainly in the winter with occasional rains in early summer and late autumn. The Rooibos plant needs deep, well drained, sandy, acidic soil with a pH of 4.5 to 5.5. The Rooibos is sun dried. Different qualities of the teas are attributed to different soil and climate conditions, with some areas recognised for their better quality.													
2.16	Are there specific effects on the environment or landscape due to the production of the GI product? (10 lines maximum)	In the traditional production area, rooibos monoculture is the main crop production and in the harsher parts, it is the only one. It is thus highly contributing to shape the landscape. There is no critical threat on the environment yet except for concerns on the 'wild rooibos', but if commercial expansion is not managed appropriately, it will lead to strong biodiversity concerns on highly specific ecosystems only found in the fynbos biome.													
<b>3. Legal protection at the national level</b>															
3.1	Is the GI protected by a specific legal tool?	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input checked="" type="checkbox"/>												
3.2	If YES, mention the legal tool(s) protecting the GI	<table border="0"> <tr> <td>Individual trademark</td> <td><input type="checkbox"/></td> <td>Administrative act</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Collective trademark</td> <td><input type="checkbox"/></td> <td>Judicial decision</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Certification/guarantee mark</td> <td><input type="checkbox"/></td> <td>Registration in a specific register for GIs</td> <td><input type="checkbox"/></td> </tr> </table>		Individual trademark	<input type="checkbox"/>	Administrative act	<input type="checkbox"/>	Collective trademark	<input type="checkbox"/>	Judicial decision	<input type="checkbox"/>	Certification/guarantee mark	<input type="checkbox"/>	Registration in a specific register for GIs	<input type="checkbox"/>
Individual trademark	<input type="checkbox"/>	Administrative act	<input type="checkbox"/>												
Collective trademark	<input type="checkbox"/>	Judicial decision	<input type="checkbox"/>												
Certification/guarantee mark	<input type="checkbox"/>	Registration in a specific register for GIs	<input type="checkbox"/>												
3.3	Date of recognition/registration <sup>19</sup>														
3.4	If YES, mention the institutions in charge of recognition/registration, control (inspection and enforcement) <sup>20</sup>														
3.5	Explain shortly the general application procedure for obtaining a GI in the country of origin (10 lines maximum)	There is not yet specific GI legislation in South Africa, excepted for Wines and Spirits which benefit from a specific act and administrative body. Gis are currently meant to be protected under the trade mark act as collective trade marks but there exists no case of enforcement of the GI law in South Africa.													
3.6	Explain the main issues encountered in the application procedure for this product														

<sup>18</sup> Describe the whole process (from production of the raw material to the aging process) for producing the product, including technical features, plant varieties, animal breeds, etc. (10 lines maximum)

<sup>19</sup> Indicate the year of the recognition/registration for the more relevant protection tool

<sup>20</sup> If relevant, the steps of the process of registration may be explained; for the institutions, mention their status, website, etc. (10 lines maximum)

	(difficulties, crucial points, negotiations, decisions by courts) <i>(10 lines maximum)</i>	
3.7	If NO, what are the available systems of protection? <sup>21</sup> No appropriate tool <input type="checkbox"/> Administrative act <input type="checkbox"/> Collective trademark <input checked="" type="checkbox"/> Registration in a specific register for GIs <input type="checkbox"/> Certification/guarantee mark <input type="checkbox"/>	
3.8	What are/were the main motivations of the initiators to protect the GI? <sup>22</sup> Fight against misuses/imitations <input checked="" type="checkbox"/> Enhance the local or rural development <input type="checkbox"/> Improve the access to the market <input checked="" type="checkbox"/> Marketing tool towards consumers for trust and image <input checked="" type="checkbox"/> Manage and regulate the relevant market <input type="checkbox"/> Preserve the traditional know-how <input type="checkbox"/> Preserve specific biological resources <input checked="" type="checkbox"/> Counter rural exodus from marginal areas <input type="checkbox"/> Maintain/develop SMEs <input type="checkbox"/>	
<b>4. Data on production and market</b>		
4.1	What is the relevant market ? <sup>23</sup>	Locally the tea market, internationally inside the tea market, the herbal tea market and the natural health product market
4.2	Referring to this relevant market mentioned in the previous question, what is the product's market share in percentage (compared with the relevant market)?	Rooibos tea represents about 0.3% of total world tea sales and about 10% of the herbal tea market internationally.
4.3	What is the closest substitute of the product ? <sup>24</sup>	The green tea (unfermented black tea) is the main rival because of its antioxydant properties.
4.4	Mention another substitute <i>(3 lines maximum)</i>	Other herbal teas such as chamomile, rosehip, etc. Compared to established herbal teas like chamomile, rosehip and hibiscus, Rooibos is still a small sector.
4.5	Are there imitations of the product? <sup>25</sup>	<b>YES</b> <input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/>
	If YES, describe it/them <i>(3 lines maximum)</i>	Individual trademarks on name Rooibos registered in different countries. Rooibos trade marks are usurpated being used for packaging and selling other teas.

<sup>21</sup> If the producers wanted to get their GI specifically protected, what possibilities would they have, taking into account the available legal tools and similar cases in the same administrative context? (only one answer)

<sup>22</sup> Several possible answers

<sup>23</sup> Example for cheese : All cheeses? Regional cheeses? Farmhouse cheeses? Hard cheeses? Example for oil : All vegetable oils? PDO oils? Olive oils? The purpose is to refer practically to the market this product is competing on. (3 lines maximum)

<sup>24</sup> Describe the substitute(s) : i.e. the main products / types of products which are competing with this product in all possible ways (variants of the product, other high quality product of the same type, origin product / organic / standard industrial / imitation / usurpation (same name)? Describe the main differences between the substitute(s) and the GI product (type/quality of the raw material, aging time, processing methods, taste, nutritional composition, etc.) (3 lines maximum)

<sup>25</sup> Product(s) designed deliberately to compete with the GI product, without being necessarily labelled with the same or a similar name. To be distinguished from substitutes

4.6	Are there misuses of the GI <sup>26</sup> ?	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
	If YES, describe it/them (3 lines maximum)	Teas with very low proportion of actual rooibos or mainly sticks are labeled and marketed as Rooibos.	
4.7	Yearly volume of production Volume of products ready for trade <input checked="" type="checkbox"/> Volume of the main ingredient <input type="checkbox"/> Name of the ingredient		
	Indicate the current unit of the volume	tons	
	Production volume in 1995	4200	
	Production volume in 2000	6500	
	Production volume in 2005	9700	
4.8	Over the last five years, has the growth for production volume been : Positive <input checked="" type="checkbox"/> Negative <input type="checkbox"/> Stable <input type="checkbox"/>		
	How can the evolution of the production volume be explained?	Mainly the growth of the international demand for natural health products.	
4.9	Is/are the market/s <sup>27</sup> :		
	Local <input checked="" type="checkbox"/> National <input checked="" type="checkbox"/> Regional <input type="checkbox"/> Export <input checked="" type="checkbox"/>		
	If export : which countries ? (3 main countries or regions of the world)	Germany (about 4 000 tons in 2003), Japan (500 tons) and the Netherlands (500 tons)	
4.10	Give here the price range of the product (producer price, in US\$) <sup>28</sup>	Product: Rooibos Price: 2.9 for export market Unit: kilogram	
	Give here the price range of the product (consumer price, in US\$)	Product: Rooibos Price: 10.5 locally / 22.5 on export markets Unit: kilogram	
4.11	Is this product economically profitable for the producers, compared with the standard ? <sup>29</sup>	The Rooibos is generally economically profitable for the producers. With the export growth and the recent dry years, prices at farmer gates have become more attractive. Expansion is at least partly due to wheat and potatoes producers modifying their farming systems to include rooibos production. However, around 50ha of rooibos production is required to make a living out of this production. Many producers are not specialised rooibos producers. They also produce other crops or have livestock (fruits, sheeps, potato, cereals...).	
<b>5. Supply-chain</b>			
5.1	Number of producers in 2005 <sup>30</sup>	8	
5.2	Number of direct employees in the whole processing chain <sup>31</sup> <i>Equivalent full-time jobs</i>	5000	

<sup>26</sup> Use of the GI (or similar designation, or very close connotative elements) on products of the same type than the original ones but not coming from the designated area, or use of the GI on any kind of products not corresponding to the original one, and coming or not from the designated area

<sup>27</sup> Possibility to indicate a rough percentage for each market (optional) (several possible answers)

<sup>28</sup> A producer is : here and after, the one who produces the GI product, whoever he is (not necessarily the farmer); all prices are indicated in US\$

<sup>29</sup> Deliberate open and large question. Give some data to back up your statements (maximum 10 lines)

<sup>30</sup> Producers of the product designated by the GI

<sup>31</sup> Trying to distinguish the GI product amongst the other productions in which producers and processors are involved

5.3	How many producers are also farm processors <sup>32</sup> as well as on- farm retailers ? What percentage do these producers represent (%)	2 25%															
5.4	Are the firms generally specialised in that product?	<table border="0"> <tr> <td style="text-align: center;"><b>YES</b> <input checked="" type="checkbox"/></td> <td style="text-align: center;"><b>NO</b> <input type="checkbox"/></td> </tr> </table>	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>													
<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>																
	If NO, what is the percentage of specialised firms?	%															
5.5	Over the last five years has the growth in the number of producers been :	<table border="0"> <tr> <td>Positive <input checked="" type="checkbox"/></td> <td>Negative <input type="checkbox"/></td> <td>Stable <input type="checkbox"/></td> </tr> </table>	Positive <input checked="" type="checkbox"/>	Negative <input type="checkbox"/>	Stable <input type="checkbox"/>												
Positive <input checked="" type="checkbox"/>	Negative <input type="checkbox"/>	Stable <input type="checkbox"/>															
5.6	How many basic ingredients are necessary to produce the product?	2															
	Mention the two most important ones <sup>33</sup> :	<table border="1"> <tr> <td>A : Rooibos</td> <td>→ go to 5.7</td> </tr> <tr> <td>B :</td> <td>→ go to 5.8</td> </tr> </table>	A : Rooibos	→ go to 5.7	B :	→ go to 5.8											
	A : Rooibos	→ go to 5.7															
B :	→ go to 5.8																
C : list the other ingredients: (2 lines maximum)	water																
5.7	<p>Please present the ingredient A Supply chain description<sup>34</sup></p> <p style="text-align: right;">Recall ingredient name</p> <p>Mention here three <b>production/ processing steps</b>                      1 : agricultural production (type milk, pork, cereals) : aspalathus linearis                      2 : processing step 1 (fruit sender, milk collector/processor, slaughterhouse, cheesemaker..) : Oxidation, drying                      3 : processing step 2 (wholesaler, cheese mature, cooked meat products, ready cooked pr) : Sifting, sterilization, packaging</p> <p><b>For ingredient A, how many actors operate at every step (fill in with figures in the boxes : four possible integration structures are provided here)</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Primary production</td> <td style="width: 15%; text-align: center;"><i>Small scale and large scale farmers</i></td> <td style="width: 15%; text-align: center;"><i>independent wild harvesters and small scale farmers</i></td> <td style="width: 15%; text-align: center;"><i>Estate farmers</i></td> <td style="width: 40%; text-align: center;">Total producers (horizontal sum) : 400</td> </tr> <tr> <td>Processing Step1: Processes on the tea court</td> <td></td> <td></td> <td style="text-align: center;"><i>Processors</i></td> <td style="text-align: center;">Total processors 1 (horizontal sum): 300</td> </tr> <tr> <td>Processing step 2 :</td> <td style="text-align: center;"><i>Processors</i></td> <td></td> <td></td> <td style="text-align: center;">Total processors 2 (horizontal sum) :</td> </tr> </table>		Primary production	<i>Small scale and large scale farmers</i>	<i>independent wild harvesters and small scale farmers</i>	<i>Estate farmers</i>	Total producers (horizontal sum) : 400	Processing Step1: Processes on the tea court			<i>Processors</i>	Total processors 1 (horizontal sum): 300	Processing step 2 :	<i>Processors</i>			Total processors 2 (horizontal sum) :
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Processing step 2 :	<i>Processors</i>			Total processors 2 (horizontal sum) :													

<sup>32</sup> Farm processors are producers of raw material who also process the final product

<sup>33</sup> A second main ingredient should be mentioned only when it has an important influence on the production process and supply-chain relations; as an example, salt is generally not an important ingredient in this perspective, even if it is of a general use in many products

<sup>34</sup> Four possible cases of partial or total integration were kept for three levels of the supply-chain. Firms that only provide primary production, or step 1 or step 2 processing ; firms involved in primary production and step 1 processing; firms providing step 1 and step 2 processing ; and firms that realize all production steps of the supply-chain. For the product (or each major ingredient if needed), give the name of the processing step, the number of firms for each possible case, and the sum for the supply-chain level.

5.8	Please present the ingredient B supply chain  Recall ingredient name  <b>For ingredient B , how many actors operate at every step (fill in with figures in the boxes : four possible integration structures are provided here)</b>	
5.9	In the supply chain, the actors developing the main strategic action (key success actors) are (several possible answers):  Agricultural producers <input type="checkbox"/> Processors of the first step <input type="checkbox"/> Processors of the second step <input checked="" type="checkbox"/>	Retailers <input type="checkbox"/> Other private actors <input checked="" type="checkbox"/> Other public actors <input type="checkbox"/>
5.10	Explain why this kind of actors have a strategic position ? <i>(3 lines maximum)</i>	At the local level, the processors are the one controlling the supply and the marketing as well as the quality of the rooibos. Internationally, few tea brokers especially in Germany are controlling the market and setting the prices.
5.11	Are there strategic actors outside the geographical area? Is an external actor in a strategic position? Explain <i>(6 lines maximum)</i>	On the local market, the main player is one of the processor coming from inside the geographical area. It represents around 95% of lcao1 sales.  As mentioned above, the German tea brokers are the price makers internationally. Rooibos is mainly sold in bulk on the export markets. This significantly limits the local processors capacity to control and monitor quality on the export markets.
5.12	Define the organisation of the stakeholders (several possible answers)  Producers' association only for the GI <input type="checkbox"/> Producers' association not only for the GI <input checked="" type="checkbox"/> Interprofessional body only for the GI <input type="checkbox"/> Interprofessional body not only for the GI <input checked="" type="checkbox"/>	Organization through a public body only for the GI <input type="checkbox"/> Org. through a public body not only for the GI <input type="checkbox"/> No collective organization <input type="checkbox"/>
5.13	Organisation's role: what are the main actions of the collective organisation? (several possible answers)  Definition of the code of practices <input type="checkbox"/> Collective promotion <input checked="" type="checkbox"/>	Defence of interests <input checked="" type="checkbox"/> Quality monitoring <input type="checkbox"/> Technical support <input checked="" type="checkbox"/>

5.14	Describe the collective organisation (history, composition, debates, etc.) <i>(10 lines maximum)</i>	There are many collective organisation around Rooibos. There are two co-operatives of small scale farmers (settled in the late 1990's). The South African Rooibos Council (SARC) was established as section-21 company in April 2005 to act as industry body representing all players in the value chain. Membership is open to all the industry players. Concerning the Rooibos GI, a GI Rooibos committee was established in August 2006 following a SARC general assembly decision. It represents all the stakeholders and benefits from a strong involvement from the Western Cape Department of Agriculture.
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## 6. Consumers

6.1	Define the main type of consumers/customers (several possible answers)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Urban consumers with high income</td> <td style="width: 10%; text-align: center;"><input type="checkbox"/></td> <td style="width: 40%;">Local traditional consumers</td> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> </tr> <tr> <td>Urban consumers with low income</td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Diaspora</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Connoisseurs</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Consumers are not specific</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table>	Urban consumers with high income	<input type="checkbox"/>	Local traditional consumers	<input checked="" type="checkbox"/>	Urban consumers with low income	<input type="checkbox"/>	Diaspora	<input type="checkbox"/>	Connoisseurs	<input checked="" type="checkbox"/>	Consumers are not specific	<input checked="" type="checkbox"/>
Urban consumers with high income	<input type="checkbox"/>	Local traditional consumers	<input checked="" type="checkbox"/>											
Urban consumers with low income	<input type="checkbox"/>	Diaspora	<input type="checkbox"/>											
Connoisseurs	<input checked="" type="checkbox"/>	Consumers are not specific	<input checked="" type="checkbox"/>											
6.2	What is the main occurrence of consumption? (several possible answers)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Everyday consumption</td> <td style="width: 40%; text-align: center;"><input checked="" type="checkbox"/></td> </tr> <tr> <td>Seasonal consumption</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Consumption only for celebrations or special occasions</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Consumption as an ingredient</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Everyday consumption	<input checked="" type="checkbox"/>	Seasonal consumption	<input type="checkbox"/>	Consumption only for celebrations or special occasions	<input type="checkbox"/>	Consumption as an ingredient	<input type="checkbox"/>				
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Consumption only for celebrations or special occasions	<input type="checkbox"/>													
Consumption as an ingredient	<input type="checkbox"/>													
6.3	Cultural context: describe the historic and present cultural consumption context considering its impact on the consumption of the GI product <i>(10 lines maximum)</i>	Traditionnally gathered in the wild by the indigenous San and Khoikhoi, the Rooibos has been consumed in the production region for several centuries. It became well known as the "poor man's tea" especially during the apartheid time when black tea was not easily available due to the embargo. Rooibos, which is nowadays mainly cultivated, has a stable domestic consumption but it is increasingly consumed in western countries for its health properties.												
6.4	Describe the consumption of the GI product in relation to the welfare and income contexts <i>(10 lines maximum)</i>													

## 7. Public support<sup>35</sup>

7.1	Financial support from public bodies	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
	If YES, describe <i>(10 lines maximum)</i>	The provincial government, specifically the Depts. of Social Services, Economic Affairs and Agriculture have invested in the herbal tea industry with financial support aimed at infrastructure and capacity building of rural producers.	
7.2	Technical support from public bodies	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
	If YES, describe <i>(10 lines maximum)</i>	Local academic institutions, such as the Universities of Stellenbosch and Cape Town, as well as the Peninsula abd Cape Technikons further build technological and skills capacity.	

<sup>35</sup> Public bodies : not only the State, but also regional administrations/councils, research agencies, unions, associations, NGOs ...

7.3	Administrative support from public bodies	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
	If YES, describe <i>(10 lines maximum)</i>		
7.4	Other kind of support from public bodies	<b>YES</b> <input checked="" type="checkbox"/>	<b>NO</b> <input type="checkbox"/>
	Describe <i>(10 lines maximum)</i>	The Agricultural Research Council (ARC) and the Medical Research Council (MRC) play a crucial role with regard to research on the product's health aspects.	
7.5	Summarise and describe the general level of support to initiatives given by public institutions (whatever they are) <i>(10 lines maximum)</i>	The general level of support to initiatives given by public institutions is rather high, but it is not always as effective as desired. Small scale and isolated farmers do not have always benefit from the same level of support than the other farmers.	

## 8. General synthesis

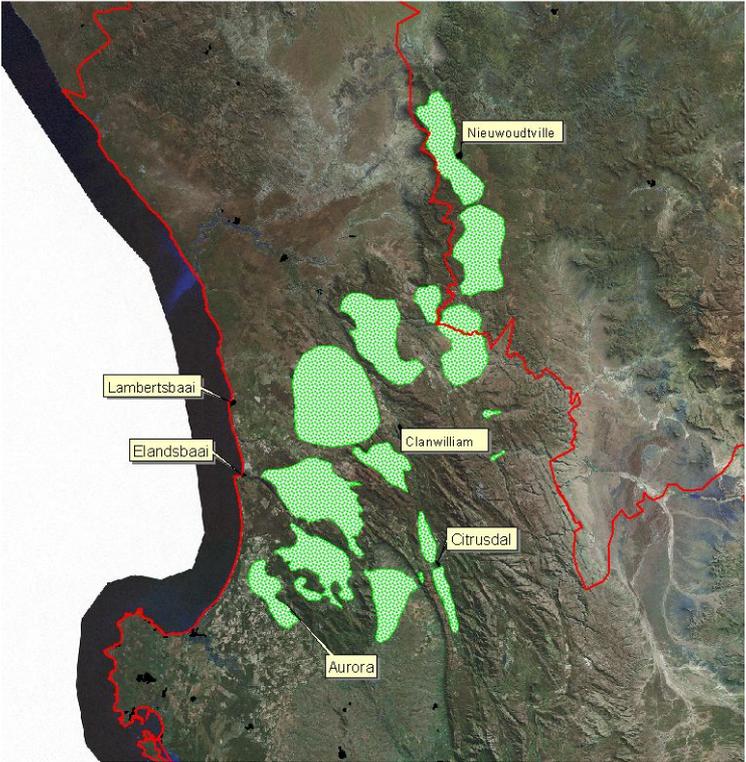
8.1	Brief SWOT analysis <i>(3 lines maximum per category)</i>	<b>Strengths</b>	<b>Weaknesses</b>
		<b>Opportunities</b>	<b>Threats</b>
8.2	All issues <i>(20 lines maximum)</i>	<p>In addition to the need for protection of the name, the clear challenge as perceived by the industry is to ensure better control over rooibos quality and to combine the GI and the biodiversity conservation strategy, rooibos being produced in and attached to a highly biodiverse area. Further important considerations are to foster collective and even territorial dynamics at the level of the rooibos production area that could support the needs for inclusiveness and rural development in a context marked by some isolation of the small-scale farmers' communities from the rest of the industry, but also by strong competition among processors.</p>	

## 9. Information sources

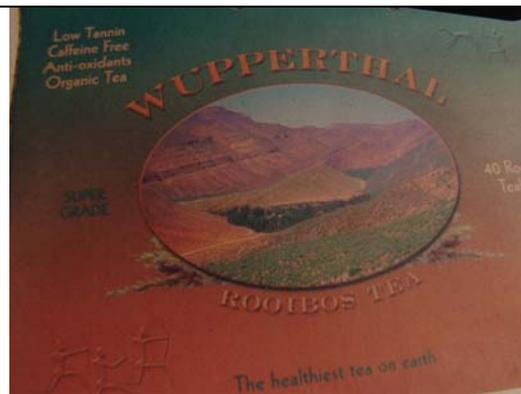
	<ul style="list-style-type: none"> <li>- Gertz A., Bienabe E. (2006), "Rooibos tea, South Africa: The challenge of an export boom", In Van de Kop P., Sautier D., Gertz A. (Eds.), Origin-based products. Lesson for pro-poor market development, edited by KIT, Amsterdam, Netherlands and CIRAD, Montpellier, France</li> <li>- Ginsberg B. (1976), "Rooibos Tea", The Herbal Review, published by the Society of Herbalists, London, 7-12</li> <li>- Leclercq M. (2006), Localised Production of rooibos in South Africa: practices, territories, and prospects of a Geographical Indication definition. Anthropological research in two small scall farmers' communities, supervised by Cormier-Salem M.-C. and Bienabe E., submitted for the Master2 degree at the Muséum National d'Histoire Naturelle</li> <li>- Morton, J.F. (1983), "Rooibos Tea, Aspalathus linearis, a Caffeineless, Low-Tannin Beverage", Economic Botany, 37(2): 164-173</li> <li>- Rooibos trade and investment report (2004), CSP development for rooibos tea, Unpublished report</li> <li>- Hansen T., de Villiers D. Cape Nature, GCBC et al. (2006), SA Rooibos Council: Sustainable Rooibos Initiative Document, 2006, Unpublished report.</li> <li>- Subsector study: rooibos tea (2006), unpublished report.</li> <li>- Sautier D., Biénabe E., Cerdan C. (2007), "Geographical Indications in developing countries: potentials and stakes", In Sylvander B., Barham E. (Eds.), Geographical Indications for food: Local Development, Global Recognition, CABI</li> </ul>
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	Publishing, Oxford, UK
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## 10. Maps, logos and photos

10.1	One or several maps can be inserted <sup>36</sup>	<div data-bbox="596 215 1342 472" data-label="Section-Header"><h3>Production Areas - Rooibos Tea Western &amp; Northern Cape</h3></div>  <p data-bbox="596 1234 1342 1279">Source: Sustainable Rooibos Initiative Document</p>
10.2	One or several logos may be inserted with a legend	
10.3	One or several photos of the product can be inserted	

<sup>36</sup> Possibility to insert an image or to indicate a web link where such map can be found



Source: Maya Leclercq, 2006



Source: Hester Vermeulen, 2006