

*Quality of Life and Management of Living Resources*

Key Action n° 5

Sustainable agriculture, fisheries and forestry, and integrated development of rural areas including mountain areas

**Development of Origin Labelled Products :  
Humanity, Innovation, and Sustainability**

***DOLPHINS***

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**Intellectual property for products  
with geographical indications**

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Originally, a geographical indication designates a product which naturally bears the name of its region of origin as it is closely linked with it, often by tradition with reference to local, fair and traditional practices. This the reason why a geographical indication is not created, but recognized and protected.

In the context of the policy of quality, geographical indications are, both in France and the European Union, economic tools for planning and for diversifying and identifying agricultural and food products and obtaining the best return on them.

A geographical indication is an autonomous intellectual property right like, for example, a patent or a trade mark. The World Trade Organisation's TRIPS (Trade-related Aspects of Intellectual Property Rights) Agreement therefore applies to geographical indications.

## **I – THE CONCEPTS**

### **Geographical indication as defined by the WTO**

The most recent definition, recognised world-wide, of a geographical indication is that laid down in the TRIPS Agreement. According to the WTO, "geographical indications are indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin".

This definition implies that a geographical indication is not only a name, but a concept involving a specific origin, to which characteristics for a given product are linked. The soil of the place of origin finds expression in the product which bears its name thanks to the human input into its production.

A geographical indication serves to designate goods and distinguish them from other goods of the same nature or type. A geographical indication is a distinctive geographical sign which notably determines the quality of a product.

A geographical indication should not be confused with an indication of source, which states only the place of production or manufacture of a product and gives no guarantee of any specific quality linked to the region or methods of production.

### **Designation of origin and geographical indication**

French and European legislation as regards the identification of quality agricultural products is based on the concept of geographical indication as defined in the WTO Agreement. Two concepts should be distinguished: designation of origin and geographical indication in the narrow sense, depending on the strength of the link between the product and its region of origin.

Designation of origin is, historically, the oldest concept used in France; it implies a very strong link between a product and its region. The manufacture, processing and production of the product take place in a defined geographical area.

Geographical indication is a more recent concept; the link between the product and its place of origin is looser. The manufacture and/or processing and/or production take place in a defined geographical area.

### **The different geographical indications in France and the European Union**

In the light of its heritage of products, France has gradually adopted a policy of identifying quality agricultural and food products in which a reference to the origin is a crucial element.

The setting up, in 1935, of the registered designation of origin (Appellation d'Origine Contrôlée, AOC) for wines and spirits and of the public authority responsible for recognition and inspection was a determining factor in the elaboration of France's legislation on geographical indications.

In 1990, the effective implementation of France's policy for identifying quality and origin led to the powers of the National Institute for Designations of Origin (Institut National des Appellations d'Origine, INAO) being extended to cover all agricultural and food products, thus establishing uniform procedures for all these products.

The indication regional wine (vin de pays) which is administered by the Interprofessional Office of Wines (Office Interprofessionnel des Vins, ONIVINS) should be regarded as a geographical indication. The link between the product and its region is less specific and looser than in the case of a designation of origin.

In 1992, Community Regulation No 2081/92 of 14 July 1992 was applied to agricultural and food products other than wines and spirits. To a large extent, it is a continuation of French policy in this area. It enables these products to be protected at Community level by extending the protection and reservation of geographical indications to Europe as a whole. It defines the concepts of protected

designations of origin (PDO) and protected geographical indications (PGI); the distinction lies in the strength of the link between a product and its place of origin. The protection provided at Community level is the same.

Inspection of these products remains a matter for each Member State. To ensure that the system is coherent and reliable, France has chosen to require that products are first recognised in France by means of:

- ?? a label or a certificate of conformity for PGIs,
- ?? a registered designation of origin (AOC) for PDOs

A few figures:

- ?? More than 450 AOCs are recognised in France for wines and spirits.
- ?? 37 AOCs recognised for cheese, cream and butter are registered as PDOs at Community level and 5 are in the process of being registered.
- ?? 19 AOCs recognised for the other products are also registered as PDOs at Community level and 2 are in the process of being registered.
- ?? 140 regional wines "vins de pays" are recognised in France.
- ?? 5 PGIs for cheese, cream and butter are registered at Community level.
- ?? 58 PGIs for the other products are also registered at Community level.

All these indications are geographical indications as defined in the WTO's TRIPS Agreement.

## **II- THE DYNAMIC NATURE OF GEOGRAPHICAL INDICATIONS**

### **The aims of the policy of identification of quality and origin.**

In the 1980s, the need for new policies for the development of French and European agriculture gradually became apparent.

This need arose for the following two reasons:

- ?? Firstly, consumers have become more demanding and have greater expectations as regards:

- guarantees on food safety;
- more detailed information on the origin and traceability of foodstuffs, on the way they are manufactured and the checks carried out throughout the process;
- quality products that are different from standardised industrial products and in which consumers recognise a value for which they are ready to pay a bit more.

- ?? At the same time, the success of the European Union's Common Agriculture Policy since the 1960s has led to an increase in productivity, which in turn has caused near-saturation of the markets.

This trend has had negative effects:

- ?? firstly, on the occupation and profitable use of French farmland, owing to mergers of farms and a reduction in the number of farmers;
- ?? secondly, on the environment in areas where farming is too intensive.

The French authorities have therefore tried to develop an official policy of identifying quality and origin as a specific tool of agricultural policy.

The novelty of the policy lies in the close link established between quality and origin, i.e. between a product and its region of origin.

Naturally enough this policy was based on the concept of designation of origin, which already existed in France, extended to the idea of geographical indication.

The policy was reaffirmed in the 1999 Agricultural Framework Law and meets in a global and balanced fashion the following principal objectives:

- ?? Promoting the diversity of products and the identification of their characteristics;
- ?? Improving the quality of products;
- ?? Maintaining agricultural and food production in France and fostering economic activity, particularly in less-favoured rural areas by developing know-how and the areas of production.

Geographical indications are a planning tool which respect the environment, promote biological diversity and preserve cultural know-how and traditions. Geographical indications are also a strategic tool for trade and a passport for exportation of specific products of quality.

A geographical indication - in the broad sense - as an intellectual property right aims firstly to protect the insistent and deliberate approach of producers by means of a product linked to its region; consumers therefore benefit from this protection.

Thus agricultural development policy, meeting consumers' expectations and intellectual property rights are closely linked.

### **The main principles behind geographical indications**

The processes which characterise designations of origin and geographical indications are based mainly on the following principles:

- ?? They are deliberate and collective processes, i.e. carried out voluntarily by a group of producers or processors, usually organised in associations.
- ?? These processes are based on the undertaking of the group of professionals, who wish to use such indications, to abide by specifications which are inevitably more restrictive than simple compliance with the rules in force. These specifications, a true identity card for a product, are presented to and discussed by a national body, and then officially approved by the authorities
- ?? Checks on compliance with the specifications and inspection of products are – in order to guarantee reliability - carried out by a third party: either official government inspection services or independent approved private bodies; inspections start at the production stage and continue throughout the whole production and marketing chain.
- ?? A product can be identified by the consumer by means of an indication or logo on the label

Quality products are guaranteed by the State throughout the whole process. In France the Ministry of agriculture and fisheries is in charge of geographical indications.

## **III- PROTECTION OF GEOGRAPHICAL INDICATIONS**

### **Protection provided in France and the European Union.**

Geographical indications in France are published in the Official Journal of the French Republic. Entitlement to protection begins on publication.

A geographical indication is a collective right, the use of which is reserved to those who comply with certain specifications, including the requirements linked to a defined geographical area. A geographical indication is linked to the exploitation of land; a geographical indication is non-transferrable and unavailable.

Protection is immediate against any misuse or infringement.

Protection is objective, i.e. it is not necessary to prove fraud, confusion or unfair competition in order to be protected by law. The requirements for proof are modified. Protection is similar to that granted to other intellectual property rights, e.g. trade marks or patents.

However, proceedings for unfair competition or fraud may be initiated in addition to proceedings for infringement of the right.

Protection is absolute, a designation of origin may not become generic, as long as it is protected in its country of origin and it may not enter the public domain. A geographical indication is imprescriptible.

So that it is properly effective, the duration of the use of the right coincides with the existence of the product.

Laws ensure that this right is complied with, enforcement means lie with the judiciary. In France, any infringement of the law on geographical indications falls under criminal law through the procedures of the 1905 law as codified in the Consumers' Code. In that case, the INAO can become a plaintiff claiming damages on behalf of government.

In order to be protected, PDOs and PGIs must be registered at Community level.

The protection provided after registration is similar to the protection provided in France to AOCs.

International protection, for France, derives from the protection granted in the country of origin. Thus, for geographical indications, strong national protection is the requirement for strong international protection.

### **Geographical indications and TRIPS agreement**

The TRIPS Agreement came into force on 1 January 1996. It is an ad minimum agreement applicable by all WTO members.

Geographical indications are defined in a section of the Agreement; this definition is now accepted multilaterally and two levels of protection and exceptions are provided.

The first of the three articles in Section 3 Part II relating to geographical indications provides protection against any use of a geographical indication which misleads the public or constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

Geographical indications for wines and spirits enjoy objective protection.

Article 24 provides for exceptions to this additional protection which relate to the main causes of dispute in this sector.

### **The value of this text.**

For geographical indications, the value of this text is that:

- ?? It confirms geographical indication as an intellectual property right,
- ?? it gives a multilateral definition of geographical indication (art 22),
- ?? It derives international protection from the protection granted in the country of origin ( art 24.9 a contrario),
- ?? It provides for additional protection and for a multilateral system of notification and registration for some geographical indications (art 23),
- ?? It poses the problem of infringement, and in doing so neither trivialises nor legitimises infringements; there are exceptions. Acquired rights are not recognised,
- ?? It establishes the obligation to enter into negotiations, particularly for cases involving the infringement, with the aim of increasing their protection and giving them protection by all members of WTO (art 24.1),
- ?? It provides for a review of the application of the provisions of the section on geographical indications (art 24.2).

Some questions raised, in particular by the developing countries, related to a possible extension of the additional protection for all geographical indications for goods other than wines and spirits, France is in favour of this as well as of the geographical indications register to products other than wines and spirits

### **CONCLUSION**

Recent years have seen progress towards a better awareness of the concept of geographical indications and designations of origin. Many countries have supported the idea that products eligible for a geographical indication are synonymous with an original quality attributable to the region of origin, and that they constitute a public good, a heritage, which needs to be preserved and protected. This also involves compliance with and mutual protection of geographical indications.

This development, which can be fostered through technical cooperation, often occurs in countries where producers are aiming to export their produce and are concerned with quality production respecting the environment. They see geographical indications both as economic tools which can be adapted to their requirements and as tools of international protection.

The Ministry of agriculture and fisheries on behalf of France, intensifies its bilateral cooperation in order to carry out geographical indications or designations of origin, particularly in Asia. By implementing this geographical indication disposal, countries could meet the safeguard of their national patrimony.

The concepts of geographical indication and designation of origin are not only part of our historical heritage, but are also modern and future concepts which are entirely appropriate for a sustainable pattern of agriculture.