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COM/AGR/APM/TD/WP(2000)15/FINAL



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

OLIS : 19-Dec-2000
Dist. : 21-Dec-2000

PARIS

DIRECTORATE FOR FOOD, AGRICULTURE AND FISHERIES
TRADE DIRECTORATE

Or. Eng.

Unclassified
COM/AGR/APM/TD/WP(2000)15/FINAL

**Working Party on Agricultural Policies and Markets of the Committee for Agriculture
Joint Working Party of the Committee for Agriculture and the Trade Committee**

**APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS IN
OECD MEMBER COUNTRIES : ECONOMIC AND LEGAL IMPLICATIONS**

This is the final version of a study which was carried out under the Programme of Work for 1999/2000 adopted by the Committee for Agriculture and endorsed by the Trade Committee.

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FOREWORD

This is the final version of a study which was carried out under the Programme of Work for 1999/2000 adopted by the Committee for Agriculture and endorsed by the Trade Committee. The principal author was Sabrina Lucatelli. Other staff in the Directorate for Food, Agriculture and Fisheries also contributed.

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Box 1. Preamble to all agriculture-trade related projects

Agriculture Ministers adopted a set of shared goals in March 1998, stressing that these goals should be seen as an integrated and complementary whole. Among the shared goals is the further integration of the agro-food sector into the multilateral trading system. In pursuit of that goal, Ministers mandated the OECD to examine ongoing and new agricultural trade and trans-boundary policy issues and their impacts, and to provide analytical support, as appropriate, to the process of agricultural trade liberalisation.

In response, the Committee for Agriculture adopted (and the Trade Committee endorsed) a comprehensive programme of work on agricultural trade policy issues, to be carried out throughout the period 1999-2000 and continuing during the period 2001-2002. The programme of work was carefully designed to incorporate specific agricultural trade policy issues that are of major interest to Member countries of the OECD, but which may also concern non-OECD countries. A wide range of issues arising at the interface of trade and domestic policy is also covered, such as the trade implications of different kinds of agricultural support measures, food safety, food security, rural development and environmental protection policies.

On-going core activities of the Committee for Agriculture such as the annual monitoring of agricultural policies and medium term outlook exercises provide an essential backdrop to the specific trade programme of work, which is being implemented on two broad fronts.

One **major element**, characterised as evaluating and strengthening trade liberalisation, aims to assist policy makers and negotiators as they enter the next round of multilateral trade negotiations on agriculture by:

- assessing in-depth the effects of the URAA on trade, on agricultural policy and on protection levels
- identifying possible impacts on trade and markets of different scenarios for further trade liberalisation
- analysing the effect of trade policy instruments such as export credits or export taxes and restrictions that have not, to date, been disciplined and the trade impacts of food aid and STEs.

The **second major** element of the agricultural trade policy work programme deals with a wide range of issues that arise increasingly at the interface of trade and domestic policy. The following issues will be examined:

- Production and trade impacts of different agricultural policy measures ranging from market price support to different kinds of direct payments and including agri-environmental measures.
- The concept of multifunctionality and in particular relationships between policies intended to ensure an adequate supply of agriculture's non-food outputs (such as possible contributions to environmental benefits and rural development) and existing or future international commitments with respect to trade.
- Policies that contribute to improving environmental performance in ways that are consistent with agricultural trade liberalisation.
- The implications of trade liberalisation for food security in OECD and selected non-OECD countries.
- Trade aspects of domestic policies in the area of food safety and quality with respect to topical issues such as biotechnology and animal welfare.
- Trade or trans-boundary aspects of competition policy with respect to geographical labels and state trading.

Reflecting the wide range of issues, different methodologies are employed in the implementation of the agricultural trade work programme -- analytical, model-based tools are used alongside statistical and descriptive approaches while some issues receive a conceptual treatment. Choice of methodology is determined by data availability and by the nature and complexity of the issues being examined, leading to either quantitative or qualitative results. In a later phase, work will be undertaken to synthesise the main conclusions and policy implications for each of the main elements of the programme.

This report is included under the general heading "Analysing the interface between domestic and international issues" of the 1999-2000 programme of work of the Committee of Agriculture. It provides an analysis of geographical indications and appellations of origin for agro-food products in OECD countries.

APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS IN OECD MEMBER COUNTRIES: ECONOMIC AND LEGAL IMPLICATIONS

Introduction

1. In the news release following the meeting of the Committee for Agriculture at Ministerial level on 5-6 March 1998, there are two references to the concept of *product origin*. In pursuit of their shared goals, Ministers adopted a set of policy principles including the requirement to “take account of consumer concerns by improving the effectiveness and reliability of food safety regulations, strengthening standards on *origin* and quality, and improving the content and availability of information to consumers, within the framework of international rules”. The Committee also identified a number of major trading policy issues, including “technical barriers to trade, sanitary and phytosanitary measures, *labels of origin*, quality standards, and export and import monopolies”. In October 1998, OECD held a Workshop on “Emerging Trade Issues in Agriculture”. From that workshop, a proposal for work on “Intellectual property for geographical labels of origin for farm products and rural development strategies” was made (AGR/CA/RD(98)2).

2. Subsequently the Committee for Agriculture included a report on geographical denominations of agricultural products in its programme of work concerning trade (questions arising at the interface between domestic policies and trade policies). The Working Party on Agricultural Policies and Markets of the Committee for Agriculture and the Joint Working Party of the Committee for Agriculture and the Trade Committee discussed and approved a project proposal on Food Safety and Quality: Civil Society and Trade Considerations (COM/AGR/APM/TD/WP(99)55) on 23-25 June 1999. This document includes *inter alia* the following text at page 5: “*The purpose of this part is to provide information on protected designations of origin for OECD countries (...)*”. At page 6: “*the scope and definition of what is meant by geographical or labels of origin will first be established, looking at their background and history*”. At page 6: “*National and supra-national (EU) legislation will be described with a view to comparing definitions (protected designations of origin, protected geographical indications, certificate of specific character*”.

3. The purpose of this paper is to provide a general overview on economic, legal and institutional aspects of the use of geographical names. Geographical names have long been used to designate a number of agro-food products. Three categories can be distinguished: indications of source, geographical indications and appellations of origin.* While the indication of source simply connects the product to a given region or place, geographical indications and appellations of origin further seek to show a specific characteristic of the product linked to its geographical origin. In this report, geographical indications and appellations of origin are analysed from three standpoints: economic theory, competition and law. However, there are some complex legal and economic questions which are not explored in this paper.

*In this report, the French term “*appellation d’origine*” is translated as appellation of origin in line with the English version of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

4. Section 1 briefly reviews economic theory relevant to the use of geographical names, and a more in-depth account of these theories is given in Annex 1. Trademarks and appellations of origin, are then described. The section ends with a description of the systems of protection in place in a number of OECD countries. Annex 2 contains more detailed information on the legal systems operating in each country¹.

5. Section 2 is devoted to analysis from a competition policy standpoint in countries that have specific legislation for appellations of origin. First of all, the structure and co-ordination typical of an agro-food sector making use of a geographical name is described. The risks of anti-competitive practices are then identified.

6. Following a brief description of cross-border issues for products sold under geographical names, Section 3 describes the international legal protection accorded to them, and discusses the provisions of the Agreement on trade-related aspects of intellectual property rights (TRIPS Agreement) which deal with geographical indications.

1. Geographical denominations in OECD countries: economic theory and statutory protection

1.1 *Geographical denominations and economic theory*²

7. The aspects of economic theory relating to the use of distinctive or quality signs such as geographical names have to do either with information theory or with Shapiro's model on reputation. With regard to information theory, an asymmetry of information between producers and consumers gives rise to market failure. While the producer knows all his product's properties, consumers do not always have easy access to this information. In particular, the market for agro-food products features three categories of goods: search goods, experience goods and credence goods (Nelson, 1970).³ These categories of goods are distinguished by the way in which information is conveyed to the consumer (see Table 1). For search goods, the consumer can ascertain the quality of an item before buying it. For experience goods, the consumer can ascertain quality only after buying the item. With credence goods, quality cannot be fully determined, even after the item has been used. Asymmetrical information places the consumer in a position of weakness so that he cannot always optimise his choices. The only solution here is to enable him to obtain more information. That is why steps have been taken, by the private sector and by government, to enhance product information for consumers. Ways of improving communication include advertising, quality signs and guarantee certificates, and labelling policies. Geographical names can play a role in this respect.

Table 1. Search, experience and credence goods

Search goods	Consumers can ascertain quality before buying them
Experience goods	Consumers can ascertain quality after buying and using them
Credence goods	Consumers cannot ascertain quality even after using them

-
1. This Annex is confined to those OECD countries which have legislated on geographical indications and/or designations of origin and for which appropriate documentation has been obtained.
 2. For a more detailed analysis of information and reputation theory, see Annex 1.
 3. See Annex 1.

8. While asymmetrical information has consequences for consumers, it also has consequences for producers and for the quality of supply. The producer, in a position of strength since he alone knows the true quality of his product, may be tempted to behave unfairly. In a market where products (or services) are not uniform, and quality differences are known to producers only, goods end up selling for the same price. As producers then have no interest in supplying higher-quality items, the consumer must expect to receive lower quality (Akerlof, 1970).⁴ The outcome is lower quality overall.

9. Shapiro's model on reputation is concerned with a firm's decisions about the quality of its output with a view to maximising profits, assuming perfect competition but imperfect consumer information (Shapiro, 1983). A firm's decision to produce high-quality products has dynamic effects: returns from that decision will be secured in the future as the outcome of a well established reputation. Consumers always have expectations about product quality, and those expectations form the firm's reputation. But the firm has an interest in investing in its own reputation only when there is a process of consumer learning about its product's quality. When consumers buy on the basis of the product's reputation, a producer who decides to go into the high-quality market is compelled to invest in order to build his reputation. During the investment period, the producer has to sell his product below marginal cost, until the reputation is established. The need for initial investment means that, in an equilibrium situation, high-quality goods must be sold at premium prices, the premium representing returns on initial investment to build reputation (Shapiro, 1983). The premium price is also necessary so that the producer continues his high-quality approach and is not tempted into short-term behaviour, lowering the quality of supply.

10. The existence of a premium price (differential between marginal cost and price) which causes a reduction in well-being compared to a situation of perfect information should not be regarded as a market failure but rather as a cost due to imperfect information: costs arising from a lack of information are just as real as production costs (Shapiro, 1983). But while better consumer information has advantages in terms of overall well-being, the cost is significant: a balance thus has to be struck between the two.

11. In order to tackle information asymmetry and improve consumer information about product quality, both the private sector and government can take a number of steps. Firms increasingly supply information about their products, for instance via advertising, labelling, certificates of guarantee, investment in trademark reputation, etc. At the same time, local and/or central governments in many countries have launched consumer information policies by introducing label schemes which supply information about ingredients, production methods, packaging, storage, product origin, etc.

12. Business and governments have begun, albeit in different ways, to supply consumers with information about product origin. But a distinction needs to be drawn between information about product origin alone (for which indications of origin are sufficient) and signs which seek to indicate a specific attribute of the product related to the fact that its quality, reputation or other characteristics are essentially linked to its geographical origin (geographical indications and designations of origin). A geographical indication informs consumers about the origin of the product, and at the same time indicates that its quality, reputation or other special characteristics can be attributed essentially to that origin. Appellations of origin go further and are intended to communicate that the product has a very close tie to the locality ensuring that production, processing and preparation take place within the geographical area specified and that its qualities and characteristics are due exclusively or essentially to its geographical environment, including natural and human factors.

13. The protection of geographical names is governed by two main legal terms: appellations of origin and marks. Among marks, two types in particular are considered: collective marks and certification marks, inasmuch as their specification may include the geographical origin of the product.

4. See Annex 1.

1.2 Comparison between marks and appellations of origin

14. Marks and appellations of origin are terms used in industrial property law.⁵ They are distinctive signs whose purpose is not to protect an invention but to distinguish products for consumers and vis-à-vis competitors. Inventions are protected by patents, for specified periods; these distinctive signs may distinguish products, via registration or usage, for indefinite periods. Both of these legal signs may be used to acknowledge the link between a product and its geographical origin. Some OECD Member countries opt for marks and others for appellations of origin. Under article 15.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, *any sign or any combination of signs capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark (...)*⁶. Under the Lisbon Agreement an appellation of origin is *the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors*⁷.

15. With regard to marks, a distinction needs to be made between individual and collective marks. The first belong to a specified natural or legal person, and the second belong to a collectivity, public or private (trade associations, other groups), which do not usually conduct commercial or industrial activity on their own account. The group or collectivity does not use collective marks directly, but via its members. These marks are principally designed to guarantee certain product characteristics (quality, nature or *origin*) for consumers. Applications for registration include the rules governing their use.

16. Something similar to a collective mark -- a certification mark -- is found in common law countries. It is again the property of a group, and indicates that the products on which it is used have been made or obtained subject to given standards (defined and inspected by the mark's owner).⁸ Collective marks and certification marks are in each case owned by groups which do not trade in the relevant products. In the case of the certification mark, the owner will verify the characteristics laid down by the rules for users. Such verification, plus the rules for users, mean that this instrument in the common law system comes closest to the one established in Roman law countries regarding appellations of origin. A group of producers may come together and draw up a set of characteristics (product quality, origin) to be observed, similar to the specifications drawn up for appellations of origin in some European countries.

5 The 1883 Paris Convention stipulates in article 1(2) that “the protection of industrial property has as its object patents, utility models, industrial designs, trademarks, indications of source or appellations of origin, and the repression of unfair competition”.

See also Saint Gal., Y. (1974), “Droit de la propriété industrielle, marques et appellations d’origine (importance et protection comparées)”, *Revue de droit rural*, p. 227.

6. Art.15.1 of TRIPS Agreement is as follows “*Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.*”

7. Lisbon Agreement for the protection of appellations of origin and their international registration, signed in Lisbon in 1960 and coming into effect in 1966. This Agreement currently has 18 members (Algeria, Bulgaria, Burkina Faso, Congo, Costa Rica, Cuba, the Czech Republic, France, Gabon, Haiti, Hungary, Israel, Italy, Mexico, Portugal, the Slovak Republic, Togo and Tunisia).

8. See “Protection of geographical indications through registration of collective marks or certification marks”, WIPO information paper, in WIPO, Symposium on the International Protection of Geographical Indications, Funchal (Madeira, Portugal), 13-14 October 1993.

17. There are also a number of differences. In countries with specific legislation on appellations of origin, and in particular in the European Union system, the group of producers coming together to have an appellation registered is required to demonstrate the existence of a special tie between the characteristics of the product and its geographical origin, and must undertake that production, processing and preparation will take place in the geographical area specified. These conditions do not apply for registration of a certification mark which is based on the intention of the group and which is free to define the rules for users in line with the characteristics it chooses. This does not exclude the possibility that the owner of a certification mark includes, should he so wish, the existence of a special tie between the characteristics of the product and its geographical origin in the certification standards of the product.

18. While marks are in fact a private property right, appellations of origin can be either a public or a private property right, affording a collective user right to the inhabitants of the region concerned. Another dissimilarity is that under Council Regulation (EEC) 2081/92 inspection must be performed by an independent agency, whereas for certification marks it is performed by the group of producers (who is also the owner).⁹ When analysing this difference, however, it is also important to state that in the case of a certification mark, the owner, who is in charge of the control stage, is prohibited from also being a producer of the goods or services certified. A further difference to be explored is the potential degree of impediment to new entrants, and the scope that actually exists, for a producer who can comply with the user rules (for the certification mark) or the product specifications (for the appellation of origin), to make use of the registered name.¹⁰

1.3 Protection for geographical indications and appellations of origin in OECD countries

19. The geographical names for which systems of protection have been introduced, both nationally and internationally, fall into three categories: indications of origin, geographical indications and appellations of origin. This study focuses on geographical indications and appellations of origin, given the special link between a product and its geographical origin which the two terms imply.¹¹ The definition of geographical indications has been accepted internationally by WTO Member countries signatories to the Agreement which have signed the TRIPS Agreement,¹² of which Article 22, paragraph 1, reads: “*Geographical indications are, for the purposes of this Agreement, 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*”.

20. Alongside that definition, which is the outcome of lengthy international negotiations, we find a number of different situations, with countries or country groups having various definitions and systems of protection, which may further differ from one product to another. One group of countries not only accepts and protects geographical indications but quite some time ago developed a more specific form of geographical name, the appellation of origin. This concept is not found in the law of all OECD countries. Among the countries giving special protection to appellations of origin, some refer back to a lengthy tradition. This is the case with some European Union countries, in particular France, Italy, Portugal and

9. In some European countries inspection of designations of origin used to be a matter for producer consortia. The switch to Community rules, which provide for inspection by an independent certification agency, is being made in stages.

10. See Section 2.2 below.

11. An indication of source simply links the product to a given region, but geographical indications, and to a greater extent designations of origin, introduce further conditions.

12. See Section 3.2.

Spain. On the other hand, Korea has just recently adopted a special system to protect geographical names which bears a close resemblance to the systems covering appellations of origin.

21. Countries with a long experience of appellations of origin have set a specific system of legal protection in place. The systems established in the European countries mentioned above,¹³ with a number of shared characteristics, are the basis for the single system approved by the European Union in Council Regulation (EEC) No. 2081/92 *on the protection of geographical indications and designations of origin for agricultural products and foodstuffs*. That system does not apply to wines and spirits, which are covered by separate European regulations.¹⁴

22. The system introduced by the European Union,¹⁵ like the national systems on which it is based, is characterised by a series of legal provisions and institutions. There are two names to be protected: the designation (appellation) of origin and the geographical indication. Designation of origin means “*the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country, and the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area*”.¹⁶ Geographical indication means “*the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country and which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area*”.¹⁷

23. The European Union thus protects two denominations, which relate to two different levels of link between product and geographical origin. For the designation of origin the link is essential, and the entire production process must take place in the defined geographical area, but for the geographical indication the link is less firm since it is sufficient that either production, processing or preparation take place in the area specified. The reputation element¹⁸ is found only in the definition of geographical indication.

24. Following voluntary initiatives by groups of producers, Member States forward applications for registration to the European Union after conducting national checks that they comply with the criteria set down in Regulation (EEC) 2081/92. Once a product has been recognised as a protected designation of origin (PDO) or protected geographical indication (PGI), it is automatically recognised and protected in all EU countries against misuse of any kind. Protection relates to the name in itself and applies throughout the EU countries, without reference to reputation or to any loss to consumers. To qualify for registration, producers must form groups and show the relevant national body proof of the link between product and geographical area, and product specifications which strictly regulate the production process (from raw materials to processing and packaging), and which they undertake to observe in order to make use of the

13. The systems are analysed country by country in Annex 2.

14. The European Union in its legislation translates AOP (*Appellation d'Origine Contrôlée*) as PDO (Protected Designation of Origin) where designation of origin is synonymous with appellation of origin. See the section on the European Union in Annex 2.

15. See the section on the European Union in Annex 2.

16. Council Regulation (EEC) No. 2081/92, Article 2, para. 2.

17. *Ibid.*

18. This element is fundamental in the economic theory that underpins special labelling systems. The theory is analysed in Annex 1.

registered name. Compliance with the specifications has to be monitored by an independent, objective and impartial structure.

25. Elsewhere, especially in common law countries, we find systems of protection for geographical indications embodied in existing laws on trademarks, unfair trade practices and consumer protection. Australia, Canada and the United States are in this group, together with the United Kingdom, although the latter is a special case¹⁹. Special systems to protect geographical indications relating to wine have been introduced to comply with a number of international agreements.²⁰

26. In these countries, protection for geographical indications is covered by *trademark law*. As a rule, a geographical indication cannot be registered as a trademark,²¹ but it can be registered as a certification mark. In that case certification may apply to materials, methods of manufacture, quality, or *geographical origin*. Registration as a certification mark entails presenting user regulations.²² It cannot be used and marketed by its owner. Accordingly, producers form groups and the group itself becomes the owner of the certification mark, which is then used and marketed by the producers themselves.

27. Law on *unfair trade practices* generally bars companies from engaging in deceptive practices. A product's place of origin can, of course, be wrongly and misleadingly stated. These provisions are designed to protect consumers. At the same time, the common law tort of *passing off* is designed to protect the reputation of producers against people seeking to trade on that reputation. Broadly speaking, it bars anyone from passing his products off as someone else's. False statements and resultant losses are essential components of passing off. Consumer protection may be secured by unfair trade practice law, or separate legislation. It broadly punishes any person who, in trading, gives a false description of products.

28. These countries have introduced special systems to protect geographical indications for wine and spirits, following international agreements. That is the case in Australia where, to implement the wine trade agreement with the EEC, amendments were passed to the Act governing the Australian Wine and Brandy Corporation. The amendments set down criteria for determining regions and localities in Australia, to which the geographical indications for certain Australian wines may correspond, and these for the first time were registered (foreign geographical indications can be registered as well). The United States also revised its trademark legislation in order to give greater protection to geographical indications for wine following signature of the TRIPS Agreement in 1995. Canada has also introduced a system of registration for geographical indications for wines and spirits (foreign geographical indications can be registered as well)²³.

29. One group of countries gives prominence to appellations of origin and protects them as a collective right forming part of the country's heritage (a right that belongs to all producers established in a geographical area, which does not disappear if unused). Appellation of origin refers to a specific link

19. The United Kingdom is in a special position. As a common law country and also a member of the European Union, it has adopted the EU system for protecting designations of origin.

20. Examples are the legislation on geographical indications for wine introduced in Australia following the 1994 Agreement on trade in wine with the EEC, or the legislation on protection for geographical names for wines in force in the United States since the TRIPS Agreement.

21. In Australia a term indicating geographical origin can be registered in exceptional cases, when its distinctiveness is attested by usage and reputation. Under US legislation, a person cannot have a geographical indication registered as a trademark if it is a term that is "primarily geographically deceptively misdescriptive". In this connection see the section on the United States in Annex 2.

22. See Section 1.2 on comparisons between marks and appellations of origin.

23. See the sections on Australia, Canada and the United States in Annex 2.

between product and origin, relating to both natural and human factors (environment/know-how). Protection depends on a set of special laws and institutions established to protect appellations of origin²⁴ (a department in the Agriculture Ministry, a national board for the protection of appellations of origin, inspection agencies, product boards). A second group of countries gives prominence to geographical indications, which testify that the product actually comes from a geographical area, taking natural factors only into account (no reference being made to human factors). Protection depends on already existing systems for the protection of trademarks.

30. In the case of the specific system applied by the European Union, once the name is registered either as a designation of origin or as a geographical indication, it is fully protected in all EU member states²⁵. The recognition of a third country's geographical name as a PDO or GI is subject to the strict respect of a number of EU regulations²⁶. This system guarantees the full protection of the name once it has been accepted after a rigorous review procedure. In the second group of countries protection depends on a number of conditions. With passing off, loss or damage is essential for any legal action to succeed. In addition, the plaintiff must prove loss. This means that when a producer from elsewhere seeks to protect his appellation of origin via a passing off action, he has first to show that he has a reputation in the country in question, and that the reputation has been damaged. What is understood by reputation in a given country is not laid down, but decided by the courts on a case-by-case basis. This type of protection is not available for new appellations of origin into another country, since it applies only once reputation has been established.²⁷ For this purpose, the protection of a geographical name can be provided by registration as a certification mark. For instance, a number of foreign groups have registered their appellations of origin as certification marks in the United States. They include Bordeaux wine (France), Rioja wine (Spain), Madeira wine (Portugal) and Roquefort cheese (France). However, under trademark law, protection is not feasible when the name is deemed generic. Since in most countries there are no complete lists of generic names, this again is a matter for courts to decide, case by case.

1.4 Further considerations

31. While the use of geographical names can enhance consumer information, a number of points still have to be clarified. We first have to consider the type of information that the denomination conveys to consumers. They guarantee a specific feature of the product, not necessarily its superior quality. The systems which individual countries have set in place to protect geographical indications and appellations of origin, described in Annex 2, and the way they are applied, do not appear to guarantee a link between geographical name and high quality. Under the European regulations for wine, for instance, geographical indications can be applied to quality wines produced in specified regions (quality wines PSR) and to table wines (local wine). Both must have a specified origin and comply with certain production rules laid down

24. See the sections on the European Union, France, Italy, Spain and Switzerland in Annex 2.

25. Registering a name as a designation of origin means that any different use of the same name is prohibited, although there are exemptions under rules governing the protection of long-existing trademarks.

26. For example, with reference to agricultural products other than wine and spirits, Art 12 of Reg. 2081/92 states "*Without prejudice to international agreements, this regulation may apply to an agricultural product or foodstuff from a third country provided that: the third country is able to give guarantees identical or equivalent to those referred to in art 4; the third country concerned has inspection arrangements equivalent to those laid down in art 10; the third country concerned is prepared to provide protection equivalent to that available in the Community to corresponding agricultural products for foodstuffs coming from the Community*".

27. US legislation recently filled this gap by amending the Lanham Act, which now authorises registration of trademarks and certification marks, on the basis of intended use.

by Member States, while also complying with a minimum Community framework which is far stricter for quality wines PSR than for local wines. But within each category, quality varies considerably.

32. Although the information supplied concerns a specific feature of the product linked to its geographical origin, it has to be borne in mind that the consumer's perception of its origin, and the importance this has in his assessment of the product, are not identical across all consumers. For some, origin is one of the most important attributes of the product. But some others attach greater importance to other attributes, such as safety and nutritional value.

33. Appellations of origin or geographical indications are linked to product specifications covering the method of production, the provenance of raw materials and a range of conditions designed primarily to guarantee that the specificity of the product is met by all producers. That is no bar to some producers topping up the reputation linked to the name and recognised by certification, with a reputation supplement of their own to position their product at a higher level. It would be possible to use both the geographical name and the mark simultaneously, the latter providing scope to position the product on the market at different levels of quality.

34. We should consider the importance of these distinctive signs (geographical indications protected both through a certification mark and an appellation of origin) for developing and protecting the reputation of a product and a firm. To judge from Shapiro's model, the signs can play a highly important role in investment in reputation and its protection.

35. In systems where geographical names are recognised through trademarks (certification or collective marks), the ownership of the name is private. In countries that use appellations of origin, the ownership of the name is collective. In these latter countries, the ownership of the appellation of origin can be either public (property of the State) or private (property of a consortium). In both cases, all farmers belonging to the defined geographical area and respecting the specifications have the right to use the geographical name recognised by the appellation of origin.

36. The development of a specific legal system based on appellation of origin reflects the idea that some products have specific characteristics related to their geographical origin and a traditional processing method often developed over centuries which are part of a *common heritage* of that community. The existence and development of a specific legal framework with regard to these products was also considered to be important to avoid the risk of "free riders" who do not respect the specifications and who could therefore threaten the quality of the finished product. The result is a semi public/semi private system in which it is not always clear how costs and benefits are distributed between producers and consumers. In some European countries, producer groups pay for the registration of their appellation of origin so as to defend on a legal basis their product's name in third countries. In other European countries, public systems intervene to help producers defend appellations of origin in third countries and producers do not pay for the registration of their products. The notion that a common good belonging to a specific territory could be privately owned, as is the case with trademarks or collective marks, is not accepted.

37. Another group of countries applies the already existing trademark system to protect geographical names. Geographical names, through the use of private trademarks, collective trademarks or certification trademarks, are recognised as privately owned. These countries believe that a separate system for the protection of geographical indications is not warranted. Private persons acquire traditional trademark rights on the basis of the exclusive use of that geographical name, which results in the term becoming distinctive of that good (Meltzer, 1999). Concurrently, it is recognised that when many persons or the inhabitants of a region wish to use the same geographical name, that name can be used by all persons as a certification mark indicating a regional origin.

2. Analysis from a competition standpoint: the national dimension

2.1 *The co-ordination element in organising a food chain under appellation of origin*

38. For agro-food products with a specified geographical name, and particularly appellations of origin, some degree of co-ordination is required between the actors involved. This may entail co-ordination, both horizontally and vertically, in one of a number of forms. Producers and processors, while they may be independent firms, are linked in that they make a particular PDO product whose chief characteristics are set out in specifications. Research has shown the importance of co-ordination for traditional quality products, bringing out the various motivating factors (Boccaletti, 1992; Canali, 1997; Barjolle/Chappuis, 1999). The most frequent reason is the need, at the end of the processing stage, to arrive at a product with specific characteristics; this entails monitoring all along the chain.²⁸ So a collective strategy is needed, together with hybrid organisational forms²⁹. Research based on transaction cost theory³⁰ points out that, for products requiring a collective strategy, savings on transaction costs are more important than savings on production costs, which are often limited on account of the differentiation strategy and the firms' location (Barjolle/Chappuis, 1999).

39. In any analysis from a competition policy standpoint, it is very important to remember that appellations of origin are not linked to the size of the market for the product. A number of OECD countries have applied appellations of origin to products of all kinds, with widely varying production structures. That means that reference markets are very different, and so are production volumes. To date, competition authorities have not often intervened to deal with practices in PDO chains, and then have taken a case-by-case approach based on careful study of the market in question.

28. Other motivating factors include the type of product, strongly differentiated and with high value-added; the seasonal nature of a number of traditional products; the location of some groups in places where production costs may be higher (hill and upland products, for example).

29. With regard to hybrid organisational forms, Ménard explains that "The neoclassical approach finds it very hard to take into consideration such arrangements, which do not obey the rules governing competitive markets or concern integrated enterprises, and it tends systematically to view them as cartels, as can be seen from several decisions by the competition authorities. Yet the neo-institutional economy considers that hybrid organisational forms bear all the hallmarks of a special arrangement, with the combined advantages of closer co-ordination than usual on the market and more powerful incentive mechanisms than those of integrated firms (...)" (Ménard, 2000).

30. Discussing this theory, Williamson (1985) identifies three different ways of organising transactions (governance structures): the spot market, hybrid forms (contracts) and the firm (hierarchy). Concentrating on the first two, a spot market is established when there are no special relations between economic agents, the goods traded are relatively uniform in quality and can be bought just as well from one producer as another, price being the sole determinant. Hybrid forms (contracts) predominate when goods are more specific and transactions frequent, meaning that the relationship is a source of value for economic agents. In that case price is no longer the sole determinant, and there is uncertainty. The institutional form selected is partly determined by efforts to minimise costs (transaction costs and production costs).

For an analysis of transaction cost theory, see Williamson E., *The Economic Institutions of Capitalism*, New York: The Free Press, 1985.

2.2 *Decisions by competition authorities and risks of anti-competitive practices*

40. From analysis of a number of cases³¹ where competition authorities have intervened in OECD countries (see the table below), a number of risks of anti-competitive practices can be identified. There are further risks, on which no rulings have been made, which are also regarded as raising competition issues.

41. There are three main types of risk from the standpoint of free competition and market rules: monopolistic cartels, obstacles to new market entrants, and over-administration and over-regulation.

The risk of monopolistic cartels

42. In several cases adjudicated in the European Union, the authorities found that groups had taken measures to control total supply. In most cases the total annual supply programme was accompanied by a detailed breakdown of output, through quotas allocated to producers. To ensure that producers kept to their quotas, penalty arrangements were in place. Only one case showed a share-out of the total market between two consortia. Direct price control measures were occasionally found, either in setting price ceilings for purchasing raw materials (above those ceilings, the consortium reduced the quantity purchased)³² and or in imposing minimum resale prices on distributors.³³ Such behaviour may be an attempt to exert monopsony or monopoly power. Even when direct price control practices were not found, the final production price was consistently supported due to the overall restrictions on output.

43. In most cases the groups or consortia put forward three main lines of defence. They claimed a legal foundation for their power to control production.³⁴ They also argued that supply controls were essential for quality control. Finally, they pointed to the exceptions which some competition regulations allow to the general ban on understandings to restrict competition.³⁵

31. We have listed only the cases known to us.

32. As in the measures which the Parma ham consortium applied to pig breeders, and which slaughterhouses applied to their suppliers in the French red label scheme.

33. As with the slaughterhouses which attempted to set a minimum resale price for distributors, in the French red label scheme.

34. For example, in the Parmigiano Reggiano and Grana Padano case, power to plan output was said to arise from an Agriculture Ministry decree. In the San Daniele and Parma ham case, the power was said to be contained in the law establishing the two consortia. The Interministerial Decree of December 1981 stated that the consortia were required to prepare an annual output plan for their particular cheeses. But setting limits on total supply was allowed only in the event of harmful imbalance between supply and demand.

Italian Law No. 526 of 21 December 1999, Article 14, redefines the role and limits of consortia.

35. In Italy, Article 4 of Law No. 287/1990 (Competition and market supervision) allows exceptions to the ban (in Article 2) on understandings which restrict free competition. Article 4 provides that “the authority may authorise (...), for a limited period, understandings prohibited under Article 2 provided they result in improvements in market supply conditions which also provide substantial benefit to consumers (...), or are linked to improvement in production quality (...)”.

In France, Article 10.2 of Ordinance No. 86-1243 of 1 December 1986, on free pricing and competition, provides that “the provisions of Articles 7 and 8 shall not apply to practices resulting from the application of legislation or regulations pursuant thereto, and practices whose authors can show that their effect is to secure economic progress and allow users an equitable portion of the resulting gain, without allowing the enterprises concerned scope to eliminate competition for a substantial portion of the products in question. The said practices may impose restrictions on competition only insofar as such restrictions are essential to achieve the objective of progress”.

Table 2. Decisions by competition councils in EU countries on PDO products

Country, Date, Decision	France, Competition Council Decision No. 92-D-30 of 28 April 1992
Title of Decision	Decision concerning practices by the Interprofessional Committee for cheese produced in Cantal department and within the geographical area of the Cantal appellation
Sector/Product	Cantal cheese
Complainant	Association of cheese-makers and refiners in the Cantal area
Contested practices	In 1986 the Interprofessional Committee approved a plan for the 1987 farm year, placing limits on total supply for the year and proposing a method of allocating output to enterprises.
Content of Decision	This measure, designed to hold down overall supply on the market, limited competition among Cantal cheese producers. It further allocated output among producers. It was not shown that these restrictions were necessary to improve product quality.
Country, Date, Decision	France, Competition Council Decision No. 94-D-41 of 5 July 1994
Title of Decision	Decision concerning poultry production practices reported under the label-scheme
Sector/Product*	Label-scheme poultry sector
Complainant	French Ministry for Economic Affairs (1991)
Contested practices	Structural measures designed to reduce output. Procedures for admitting poultry breeders inasmuch as they are discriminatory. Price collusion, in particular prices paid by slaughterhouses to breeders. The attempt by slaughterhouses to set a minimum resale price for distributors. Contractual clauses between a quality group and member slaughterhouses, to allocate slaughter markets covered by the label.
Content of Decision	While poultry production under the label scheme may be regarded as an economic advance, it was found that this advance was not dependent on the practices in question. The Council found a number of anti-competitive practices, but ruled that Article 7 of the Ordinance of 1 December 1986 had not been infringed.**

* In the French red label scheme, the label is not a PDO but a collective quality mark held by the French State. We have included it because the type of structure that it establishes is similar to that for a PDO.

** Ordinance No. 86-1243 of 1 December 1986 on free pricing and competition.

Table 2. Decisions by competition councils in EU countries on PDO products (continued)

Country, Date, Decision	Italy, Competition Council Decision No. 4352 of 24 October 1996 (Bollettino No. 43, 11 November 1996)
Sector/Product	Parmigiano Reggiano and Grana Padano cheese.
Complainants	Firms belonging to the Grana Padano Consortium reported it for anti-competitive practices. The Industry Minister referred the matter to the Competition Council, asking it to examine the measures introduced by both consortia.
Contested practices	Approval of an output plan placing limits on total annual supply. Arrangement for allocating production among member firms. Market allocation agreement between the two consortia.
Content of Decision	The practices were found analogous to agreements which restrict market competition (contrary to Article 2/1 of Italian Law 287/90 on competition and market supervision).
Country, Date, Decision	Italy, Competition Council Decision No. 3999 of 19 June 1996 (Bollettino No. 25, 8 July 1996)
Sector/Product	Parma and San Daniele ham
Complainants	The Modena farmers' association reported anti-competitive practices involving price ceilings for purchases from pig-breeders. Similar practices were also reported by members of the Parma Consortium.
Contested practices	Introduction of an output plan placing limits on total annual supply. Arrangement for allocating production among members.
Content of Decision	The practices were found to be understandings that restricted competition (contrary to Article 2/1 of Italian Law 287/90 on competition and market supervision). The consortia obtained a two-year extension in order to secure improvements in quality control.
Country, Date, Decision	Italy, Competition Council Decision No. 6549 of 12 November 1998 (Bollettino No. 46, 30 November 1998)
Sector/Product	Gorgonzola cheese
Complainants	A firm which had temporarily left the consortium reported anti-competitive practices.
Contested practices	Introduction of supply quotas. Approval of an overall output plan, and an arrangement to allocate production.
Content of Decision	The practices were found to be contrary to Article 2/1 of Law 287/90.

44. The competition authorities have responded to all three arguments in various decisions. On the first point, the Italian Competition Council ruled that, although the voluntary groups of producers (consortia) were responsible for inspecting and monitoring some PDO products, they also had a function of controlling the production activity of their members, and that function could not be removed from the scope of competition law. Although various decrees and laws in Italy gave the consortia power to monitor market conditions and advise producers, nothing conferred a power on them to place overall limits on output and allocate quotas (Competition Council Decision No. 6549, Gorgonzola cheese). On the second point, in most of the decisions reviewed the competition authorities declined to link supply control and the

groups' quality control functions. The arguments put forward by the groups on this score were not accepted in any of the decisions.³⁶ Similarly, the arguments based on exceptions were rejected.

The risk of obstacles to market entry

45. The risk of obstacles to new operators entering the market seems significant. While a number of restrictive measures from this standpoint were identified in the competition decisions, the broader question of the basic criteria defining membership of a producer group is still unsettled. Can people entitled to make a product under a protected denomination of origin actually begin making it? Two main criteria for eligibility can be posed: the producer's link to the geographical area defined in the specifications of the PDO product, and the producer's capacity to comply with standards laid down in the specifications.

46. We first need to define the two criteria. What is the required link between producer and geographical area? Must the producer own his land? Must he be a resident? At present, the various systems of legislation in place for the recognition of geographical names guarantee fairly differentiated levels of linkage between land and producer. How should that linkage be defined? Is it sufficient merely to purchase land in a pre-defined geographical area, or must one be a resident? Given that greater consumer well-being remains the ultimate aim, the rules laid down in the specifications should relate to product quality from the standpoint of the consumer, not the producer. If the specifications rest on this criterion, the producer's capacity to comply with the specifications should be the sole discriminating factor, apart from links with the specified area. But given that the groups operating appellations of origin or geographical indications are voluntary groups, may other criteria be involved in defining those entitled to use the denomination? The risk that a group may endeavour to restrict entry of new producers, in order to hold down overall supply volumes, is easy to see: we are in the area of cartels and supply limitation.

47. The competition authorities observed practices restricting access for new producers. In the case of the output plan adopted by the San Daniele Consortium, it was found that a firm which wanted to start producing ham using that name could apply to the consortium for a production quota. In no event could the quota exceed 3 per cent of the total output of consortium members. Similarly, in the French red label scheme, discriminatory measures were detected for the admission of poultry-breeders.

48. The differences between the two legal terms used to protect a geographical name, appellations of origin and marks (see Section 1.2 above), are relevant here. With appellations of origin as defined and regulated within the European Union, the right is a collective one belonging to all those living in a geographical area, and cannot be transferred; in the case of marks, and more specifically certification marks, the right is a private one. In any case, the use of either of these legal terms may, in practice, lead to a risk of obstacles to market entry.

49. In the case of appellations of origin, the conditions of entry to producer groups with a geographical name are often set out in the group's own statutes; this leaves it free to set conditions that may not be consistent with the free play of competition³⁷. In the case of certification marks, the owner decides which characteristics (product quality, origin, etc.) are to feature in the rules for users. Any operator who complies with the rules has the right to use the mark. In the United States, a certification mark can be annulled if the owner does not allow those meeting the established criteria to use the certification mark. At the same time, it is a private right and the owner remains free to select the criteria to feature in the rules for users and ensures that these criteria are respected. If the certification mark consists

36. Decision No. 92-D-30 of the French Competition Council, on Cantal cheese, said "it was not found that the restrictions on competition in the Cantal plan were necessary to secure quality advances".

37. As in the examples described in paragraph 47 and Table 2.

of a geographical name, ensuring that everyone in the region has the right to use the name can become a concern. The way in which rules are fixed by the owner of the certification mark could result in discrimination. It is interesting to note that in the United States if several operators wish to use the name of their region to indicate the origin of their product, they opt for a certification mark. In most cases the mark's owner, and hence the inspection body, is a government authority or government-authorized agency. It lays down the rules for users and any operator who is in a position to comply with them must be allowed to use the mark³⁸. In Canada, one section of the trademark law deals specifically with *certification marks descriptive of the place of origin*. If a certification mark is descriptive of the place of origin, the owner (the administrative authority of a country, state, province or municipality, or a commercial association having an office or representative in that area) shall permit the use of the mark in association with any wares or services produced or performed in the area of which the mark is descriptive.

50. It is quite difficult to make a general evaluation on the possible risk of obstacles to market entry linked to the use of an appellation of origin or of a certification mark. A case-by-case approach seems to be the most appropriate one.

The risk of over-administration or over-regulation

51. Analysis of the theories described in Section 1 and Annex 1 shows an economic reason underpinning the decision of governments and producers to establish special labelling schemes. Asymmetrical information places the consumer at a disadvantage. Official arrangements, backed by regulations, do however need to place as few restrictions as possible on competition.

52. In this connection, it is noteworthy that Council Regulation (EEC) No. 2081/92 has reintroduced the competition element in one of the most significant functions of a PDO chain: inspection. Article 10 provides that compliance with the specification rules on raw materials and end products must be inspected by an agency offering adequate guarantees of objectivity and impartiality. "An inspection structure may comprise one or more designated inspection authorities and/or private bodies approved for that purpose by the Member State". The distinction between the group of producers (consortium) making the product, and the independent certification body, responsible for inspection and certification, restores an element of competition which could be eliminated if the two functions were combined. Inspection must underpin selection of raw materials and suppliers of raw materials, and also the final decision to certify the product as a PDO or PGI.

53. Last, it should be noted that excessive bureaucracy surrounding these names can only be harmful for producers and consumers alike. It could greatly slow the registration process. Similarly, any administrative arrangements for products with appellations of origin might provide producers and processors with insufficient stimulus. They might eventually associate the success of their product with the right to use the appellation. As the appellation itself becomes a hallmark of quality, there is a danger that the producer might not respond to market signals. The whole process might discourage innovation.

2.3 Further considerations

54. While co-ordination in a food chain under appellation of origin is recognised to be important, there is still a risk that co-ordinating channels, and the agreements that result, will impede proper market operation. There is a danger that producers will push market prices up by cutting the volume of total supply. Placing ceilings on supply, and allocating quotas to producers, seems rather to be a way of overcoming structural failings in control systems. Groups of producers (consortia) tend to believe that

38. See United States Trademark Act of 1946, 15 U.S.C. § 1051 *et seq* and *Trademark Manual of Examination Procedure*, TMEP section 1306 *et seq.*

production standards can be maintained only via ceilings on supply, rather than by other methods of quality control. It is noteworthy that most of the output plans criticised by EU competition authorities are based on historical or territorial criteria. Starting from a given reference year, total supply is allocated among producers on the basis of that year's quotas. Unless production quotas are allocated on grounds of relative efficiency, consumers are likely to pay more because supply is held down and at the same time forgo the benefits that enhanced productivity would bring. Producers, compelled to stay within their quotas, lack the incentive to operate more efficiently. There may be an impact on the quality of the end product as well.

55. It should be borne in mind that there is a very wide range of products with protected appellation of origin. Some are produced on a small scale in disadvantaged areas, while others are produced with sophisticated levels of industrialisation and marketing. In some cases, proper co-ordination of the chain, including vertical integration of several of these levels, may correct problems due to the seasonal nature and specific characteristics of a number of these products, and to the requirements arising from continuous quality monitoring.³⁹ In other cases, involving products produced on a small scale in disadvantaged rural areas, vertical integration is not feasible in either theory or practice. In that case, the group (consortium, producers' association) may offer to assist producers by playing a monitoring and advisory role with regard to market prices, in order to avoid excessive fluctuations in supply that might affect the final quality of the product and in the long run its continued presence on the market. In any event it should confine itself to an advisory role only, based on price forecasts, and never become involved in applying penalties. Supply ceilings and quotas do not always seem essential for chains to operate smoothly.

56. It should also be borne in mind that products of designated origin are not only competing among themselves but also competing with every other product of the same type with no specific geographical name. A hard cheese of designated origin, for instance, still has to compete with all the other hard cheeses on the market, and is therefore subject to competition like any other product. Imposing supply quotas with the sole aim of increasing the final price may in fact prove not to be worthwhile, given that "typical products" are now sold in supermarkets alongside all the other branded products. A differentiation strategy that positions these products at the high-quality end of the market may prove to be far more worthwhile.

57. Recent research on this subject offers varying interpretations. A comparative analysis of official quality signs (France's red labels and PDOs) and business franchising considers these two legal terms to be of a similar nature: "collective quality systems". Both generate forms of organisation characterised by similar contractual provisions. But Community competition law treats them as being different (Raynaud, 1999). Other research stresses the importance of ensuring that this type of official quality sign can obtain special treatment under competition law (Valceschini, 1999; Raynaud and Valceschini, 1998). The question is still unresolved, in particular for geographical denominations: given that competition authorities, when ruling on contested practices, consider the benefits and costs to consumers, is there any justification for these types of products to be given special treatment in relation to existing competition law? Is the additional information for consumers enough to warrant special treatment? Is the well-being that producers and consumers may gain, in terms of overcoming market failure stemming from asymmetrical information, sufficient to offset the losses from restricted competition?

39. In this connection see Esposito, "Antitrust Commission vs. consorzi di tutela: an economic evaluation" in "Typical and Traditional Products: Rural Effect and Agro-Industrial Problems: 52nd EAAE Seminar, Parma 1998.

3. The international perspective

58. After a brief description of cross-border issues to do with products sold under geographical names, this section will address the mechanisms put in place to ensure compliance with intellectual property rights at international level. Numerous disputes involving the use of geographical denominations have impeded or may impede trade. The difficulty of reaching an agreement on the protection and use of such names may prevent trade agreements from being concluded. The first international agreements relating to the subject date back to the end of the 19th century. Since then, the situation has moved on and new international measures have become necessary. International protection for geographical indications has improved with the signature of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

3.1 *Cross-border aspects*

59. The cross-border issues stemming from the use of geographical names for agro-food products fall into two broad categories, one relating to the use of geographical names and the other to the extension of protection to an entire production chain. The use of geographical names has for a long time given rise to disputes, which national courts in the European Union countries have been called upon to resolve (see Table 3). In some cases a country which protected geographical names (as appellations of origin or geographical indications) would criticise another for lack of protection or refusal to afford protection. In others there has been an attempt to enter a foreign market by giving a product a name expressly protected in the importing country. Occasionally, the protected geographical name of an agricultural product has been used for a good produced by another industry. With regard to the second category of issues, extending the protection of a name to an entire production chain, there have been disagreements as to how far down the process the name can be protected (see Table 4). Can a wine of designated origin be bottled outside its production area? Can a food product of designated origin be sliced and packaged by another company and sold under a distributor's trademark?

**Table 3. Cross-border issues in EU countries, stemming from the use of geographical names
(a few examples)**

Complainant	Consorzio del Gorgonzola v. the Austrian company Agrasserta
Issue	The production by an Austrian company of <i>Oesterzola</i> cheese. Consorzio del Gorgonzola was against the use of the suffix <i>zola</i> , which could confuse consumers.
Decision	The Loeben Court judges decided that the Austrian company had to stop selling this product. The Vienna Court of Appeal also found for Consorzio del Gorgonzola.
Complainant	Consorzio del Gorgonzola v. an Austrian company
Issue	The marketing in Austria since 1983 of a cheese produced in Germany called <i>Cambozola</i> . Consorzio del Gorgonzola asked the Austrian Court of Justice to ban the marketing of this product.
Decision	<p>The EU Court of Justice decided that <i>Cambozola</i> is evocative of the Gorgonzola protected designation of origin for two reasons. First, there is a phonetic similarity; secondly, both names refer to the same kind of product, a marbled cheese. Article 13 of EU Reg. 2081/92 states that registered names shall be protected against any misuse, imitation or evocation even if the true origin of the name is indicated (...). But Art. 14 of EU Reg. 2081/92 stipulates that the use of a trademark referring to a geographical name may continue notwithstanding the registration of a designation of origin or geographical indication if it was registered in <i>good faith</i> before the date on which application for registration of a designation of origin or geographical indication was lodged. The <i>Cambozola</i> mark had been registered as a trademark before the recognition of Gorgonzola as a designation of origin at European level; the role of verifying the presence of <i>good faith</i> on the basis of existing national and international legislation falls to the national courts. These courts must also verify whether the mark might mislead consumers regarding the nature, quality and origin of the product.</p> <p>The Austrian company proposed adding three words to the name <i>Cambozola</i>, i.e. <i>Cambozola, German soft cheese</i>. The Consortium refused this proposal.</p>
Complainant	Consorzio del Gorgonzola v. the German company Kaserei Champignon
Issue	The use of the <i>Cambozola</i> mark by this company for a marbled cheese. Consorzio del Gorgonzola was against the use of this mark, since Gorgonzola marbled cheese was registered as a designation of origin at European level.
Decision	<p>The EU Court of Justice decided that <i>Cambozola</i> is evocative of the Gorgonzola protected designation of origin for two reasons. First, there is a phonetic similarity; secondly, both names refer to the same kind of product, a marbled cheese. Article 13 of EU Reg. 2081/92 states that registered names shall be protected against any misuse, imitation or evocation even if the true origin of the name is indicated (...). But Art. 14 of EU Reg. 2081/92 stipulates that the use of a trademark referring to a geographical name may continue notwithstanding the registration of a designation of origin or geographical indication if it was registered in <i>good faith</i> before the date in which application for registration of a designation of origin or geographical indication was lodged. The <i>Cambozola</i> mark had been registered as a trademark before the recognition of Gorgonzola as a designation of origin at European level; the role of verifying the presence of <i>good faith</i> on the basis of existing national and international legislation falls to the national courts. These courts must also verify whether the mark might mislead consumers regarding the nature, quality and origin of the product.</p> <p>The German Court of Justice refused Consorzio del Gorgonzola's petition. Consorzio del Gorgonzola decided to appeal, but the appeal was refused. Eventually, the German Constitutional Court refused the last appeal and use of the name <i>Cambozola</i> in Germany was definitively authorised.</p>

Table 4. Cross-border issues in EU countries, stemming from the extension of protection to different levels of the food chain (a few examples)

Complainant	Belgium v. Spain
Issue	Spanish rules governing the bottling of wines bearing the designation of origin “Rioja”. Belgium considered that those rules which, in particular, require the wine to be bottled in cellars in the region of production in order to qualify for “controlled designation of origin” (denominación de origen calificada) were detrimental to the free movement of goods. Belgium brought the Rome Treaty infringement proceedings before the Court of Justice. The obligation to bottle Rioja wine inside the geographical area identified by the product specification was considered by Belgium as a breach of Art. 34 of the Treaty of Rome which deals with the prohibition of quantity restrictions on exports.
Decision	The European Court of Justice rejected the claim from Belgium. On the basis of Art. 12 of EU Reg 823/87, ‘member states should be given a certain amount of freedom to specify the wine-making and preparation method for each wine within the framework of the oenological practices permitted in the Community’. The obligation to bottle the wine in the limited geographical area can be an indispensable element for the specificity of the wine produced in that area. Article 16 of the Rome Treaty stipulates that “provisions of Arts. 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of (...) the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction of trade between Member States”. By ensuring that wine growers in the Rioja region controlled bottling as well, the Spanish rules pursued the aim of better safeguarding the quality of the product and, consequently, the reputation of the designation. In the Court’s view, the Spanish rules were to be regarded as compatible with Community law despite their restrictive effects on trade, provided that they constituted a necessary and proportionate means of upholding the reputation enjoyed by the Rioja designation of origin.
Complainant	Consorzio di Parma v. Marks & Spencer
Issue	To prevent the supermarket chain from selling Parma ham unless it had been sliced and packaged in Italy. It was argued that Parma ham could only be described as Parma ham if it complied with Italian law and that slicing and pre-packaging affected the quality of the ham (passing off action)
Decision	The UK Court of Appel dismissed the appeal and the cross-appeal. It was held that there was no misrepresentation as to the nature of the product being sold.
Complainant	Consorzio di Parma v. ASDA Stores Ltd, a British supermarket chain
Issue	To prevent the supermarket chain from selling Parma ham unless it had been sliced and packaged in Italy. It was argued that Parma ham could only be described as Parma ham if it complied with Italian law and that slicing and pre-packaging affected the quality of the ham (based on EU regulations).
Decision	The action failed. The British judge concluded that the EU regulations make Parma ham a protected designation of origin, but do not incorporate the Italian rules on slicing and packaging. Although the Italian rules prohibit the sale of Parma ham which has been pre-sliced and packaged in Britain as Parma ham, they do not have direct effect in Britain.

60. Legal and economic arguments lie behind these disagreements, principally the fact that each of the countries involved has its own system of protection for geographical names. There is also the economic dimension. As already seen, a protected geographical name, regardless of which legal term has been used

to protect it, can have a reputation that has been built up over time. Misappropriating that name means taking advantage of another producer's investment in goodwill, by trading on his product's reputation among consumers and their good faith.

61. Appellations of origin, geographical indications and trademarks are all signs of product differentiation, which is one of the most common business strategies applied. The challenge is to ensure that trade is fair (allowing trade flows) and that producers are not disadvantaged by the usurpation of names.

3.2 *Protection of intellectual property rights relating to geographical names prior to the TRIPS Agreement*

62. Since the end of the 19th century geographical names have, directly or indirectly, been the subject of a number of international agreements and conventions. The leading ones are outlined below:

63. *The 1883 Paris Convention for the "protection of industrial property"*. Article 1(2) stipulates that "The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition". On the subject of indications of provenance in particular, Article 10(1) prohibits the "direct or indirect use of a false indication of the source of the goods". Under Article 25, any country party to the Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure its application. Only false indications are covered by Article 10. No protection is provided for cases when the indication is used in translated form or accompanied by terms such as "kind", or "type", or when it is deceptive, *i.e.* likely to mislead the consumer. The decision as to whether a name is generic or non-generic is left to domestic legislation or case law. Originally signed by eleven countries, the Convention now has 117 Members.

64. *The 1891 Madrid Agreement concerning the International Registration of Marks*. This establishes a Special Union within the framework of the Union for the Protection of Industrial Property. The Agreement establishes a harmonised procedure for the international registration of marks. The protection afforded to a mark is based on national registration. International registration takes effect in the other countries in the Special Union: under Article 1(2), "nationals of any of the contracting countries may, in all other countries party to this agreement, secure protection for their marks". Countries may refuse to protect a mark in their territory, but their refusal may be based solely on the grounds which would apply in the case of a mark filed for national registration (Article 5). A mark is protected for 20 years. If it is cancelled for some reason in the country of origin, the international mark will also be cancelled. At present, 67 States participate in this Special Union.

65. *The 1891 Madrid Agreement for the "Repression of False or Deceptive Indications of Source on Goods"*. Since 1958⁴⁰, penalties can be imposed not just for false indications but for deceptive ones as well. The Agreement has extended penalties to all indications of source which, without being false, are liable to deceive or mislead consumers. It is for the courts to decide whether or not the indication is false. Similarly, it is for the courts of the country in which the goods have been seized to decide whether or not the indication is generic. For seizure to be upheld, there must be evidence of a clear intention to defraud or to cause confusion in the mind of the consumer. There are special provisions for wines under Article 4, preventing national courts from considering appellations of origin for products of the vine as generic. Terms such as "make" and "imitation" do not appear to be prohibited, provided that the consumer is

40. This agreement was reviewed in Lisbon in 1958.

informed that the product resembles the original product. The Agreement does not protect indications of provenance used in translated form. Initially signed by eight countries, it now has 30 Members.

66. The *1958 Lisbon Agreement for the Protection of Appellations of origin and Their International Registration*. In creating a Special Union within the Union for the Protection of Industrial Property, the Agreement gives the first international definition of appellations of origin and introduces a mechanism that affords international protection for appellations of origin and is independent of domestic legislation. It provides for the international registration of appellations of origin, and at the same time the Contracting Parties undertake “to protect on their territories, in accordance with the terms of this Agreement, the appellations of origin of products of the other countries of the Special Union, recognised and protected as such in the country of origin” (Article 1/2). As long as an appellation is protected in the country of origin, it cannot be deemed to have become generic in another country of the Special Union. This agreement currently has 18 Members (see footnote 7).

3.3 *Geographical indications and the Agreement on Trade-Related Aspects of Intellectual Property Rights*

67. Geographical indications are covered in the TRIPS Agreement, a specific section of the WTO Agreement of 1994 addressing intellectual property issues. Article 22, para. 1, defines geographical indications as “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, the outcome of lengthy negotiations, is broad enough to include both appellations of origin and geographical indications. As explained in Section 1, both terms describe the link between a product and the territory in which it originated, but one sees it as closer than the other. In any event, the fact that the Agreement contains a definition of geographical indications and a section devoted to this legal term implies that Members are under an obligation to respect and protect such names at national level, according to the requirements set out in Articles 22, 23 and 24 and analysed below. In particular, WTO Members must respect Article 41 of the TRIPS Agreement and ensure that “enforcement procedures (...) are available under their law so as to permit effective action against any act of infringement of intellectual property rights” covered by the Agreement, including geographical indications.

68. The other significant point is that intellectual property rights are subject to the same consultation and dispute settlement mechanism as all the other matters covered by the rest of the WTO Agreement. The Dispute Settlement Understanding is actually specified as being applicable to the TRIPS Agreement (Article 64, para. 1).

69. The requirements applying to geographical indications provide for two levels of protection, one for all products and another stricter level for wines and spirits. Set out below are the requirements for general protection, those for the special protection afforded to wines and spirits, the exceptions and, finally, the provisions concerning international negotiations.

General protection

70. Article 22 covers all products (including non agro-food products). Having defined geographical indications, this article stipulates that “Members shall provide the legal means for interested parties to prevent (...) the use of any means (...) which misleads the public as to the geographical origin of the good (...) or any use which constitutes an act of unfair competition (...)”. With regard to the protection of a geographical indication, the public must have been misled (or run the risk of being misled) or there must have been an act constituting unfair competition. As for the relationship between geographical indications

and marks, Article 22, para. 3, provides scope for a Member to refuse “the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.” A Member may refuse to register such a trademark either *ex officio* or at the request of an interested party. Refusal (or invalidation) is based on domestic legislation. The essential grounds for refusing or invalidating the registration of a trademark is misleading the public.

Special protection for wines and spirits

71. Under Article 23, para. 1, wines and spirits are afforded additional protection. This article states that “each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question (...) even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like”. The same protection is afforded to spirits. This is additional protection, independent of any deception or evidence of unfair competition. The registration of a trademark that contains or consists of a geographical indication may be refused (or invalidated) for wines or spirits that do not originate in the territory indicated. Again, refusal or invalidation is based on domestic legislation. But misleading the public is no longer the essential grounds for refusing or invalidating the registration of a trademark. In the case of homonymous geographical indications, both are protected provided that this does not “falsely represent to the public that the goods originate in another territory”. Finally, Members undertake to negotiate the establishment of a multilateral register of geographical indications for wines eligible for protection (Article 23, para. 4).

Exceptions

72. Both types of protection described above are substantially restricted by the exceptions set out in Article 24. On the relation between geographical indications and trademarks, Article 24, para. 5, lays down the rules governing the co-existence of a previous trademark with a geographical indication. If the rights to a trademark have been acquired in good faith, either before the date of application of the TRIPS Agreement or before the geographical indication is protected in its country of origin, measures to implement the Agreement may not prejudice eligibility for or the validity of the registration of the trademark, or the right to use it. This applies to all products, including wines and spirits. As for the conflict between a geographical indication and a generic term, Article 24, para. 6, stipulates that nothing requires a Member to apply the provisions of the Agreement “in respect of a geographical indication of any other Member with respect to goods and services for which the relevant indication is identical with the term customary in common language as the common name for such goods and services (... or ...) with the customary name of a grape variety”. A local generic indication may accordingly co-exist with the imported geographical indication. Article 24, para. 4, further limits protection for wines and spirits. Thus nationals of a Member country may continue to use the geographical indication of another Member identifying a wine or spirit in connection with goods or services, provided that they have used that geographical indication in a continuous manner with regard to the same or related goods or services either for at least 10 years preceding 15 April 1994 or in good faith preceding that date.

International negotiations

73. The first paragraph of Article 24 of TRIPS Agreement stipulates that Member states agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. It is also foreseen under Article 24.2 that the “the Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of

the entry into force of the WTO Agreement. Any matter affecting compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section”.

3.4 Further international considerations

74. The advantages of having a definition of geographical indications that is recognised by all WTO Members, affording multilateral protection, have already been emphasised. Several international conventions had earlier acknowledged a series of basic principles for the international protection of geographical names, i.e. prohibiting false indications of source, penalising deceptive indications of source, and providing special treatment for indications of source for wines and spirits, which could not be deemed generic. But these conventions involved small numbers of countries, different from one convention to another, and they did not contain a dispute settlement mechanism or specify penalties for Members infringing intellectual property rights. The TRIPS Agreement does provide for such a mechanism and, for the first time, an undertaking to establish an international register of geographical indications for wines and spirits.

75. Multilateral agreement was achieved by accepting a very broad definition for geographical indications, but the definition encompasses a number of quite varied terms, reflecting the markedly different situations and levels of protection found across countries. The Agreement affords the same protection to indications of source, geographical indications and appellations of origin. Along with this very broad definition, however, we have the panoply of protection systems set up by individual WTO Members⁴¹. The existence of various forms of protection under different legal systems is beneficial, reflecting a wealth of cultural differences, but does also mean that an effective cross-border protection of geographical names is not always easy to obtain.

76. The TRIPS Agreement provides a benchmark for protection to be implemented at the national level. Even if each particular system must provide the level of protection as required by the TRIPS Agreement regardless of the way in which this protection is provided, any attempts to promote greater transparency and easier access to information (including efforts to make national legislation both clearer and more comprehensible) might help operators to protect geographical indications in a third country.

77. Furthermore, there is a single definition for geographical indications applicable to all goods, but different rules for wines/spirits and for all other goods. While the concept of origin and protected origin is more widely accepted for wine because the link between wine production and territory is clearer, many WTO Members recognise the same link for agri-food products such as cheese or fresh and cooked meats. While the Agreement recognises a general definition of geographical indications applicable to any good, the difference in treatment between wine and other agricultural products can be attributed to earlier advances in international negotiations. Products of the vine have been afforded special protection since the Madrid Agreement in 1891. The question of the differences in treatment at international level between wines and spirits on the one hand, and all other agricultural products already benefiting from special treatment at national level on the other, remains open. To facilitate the protection of wine, WTO Members have undertaken to negotiate the establishment of a multilateral register of geographical indications. At the WTO Ministerial Conference in Singapore, they agreed to extend the register to spirits.

41. See Section 1 and Annex 2.

78. Can appellations of origin be considered as non-tariff barriers to trade? The response to this question depends, in part, upon the definition of the objectives of the geographical indication. Both geographical indications and appellations of origin are used as tools to protect the use of specific geographic names attached to a product but not to protect a generic product name. If it is a generic name that is to be protected, there is a risk that market entry will be impeded. If it is a specific geographic name that is to be protected, the risk that market entry will be impeded is similar to that stemming from the use of a well-known trademark.⁴² This is particularly the case when we compare an appellation of origin to a certification trademark containing standards referring to a specific geographical area. The problem lies in the difficulty of reaching an agreement as to where to draw the line between a geographical name, which has the right to be protected as an intellectual property, and a generic product name.

Summary and conclusions

79. The fact that the agri-food market is characterised by asymmetry of information between producers and consumers puts the latter at a disadvantage. Consumers cannot be sure that the goods they buy are actually the ones they would prefer. Because producers are in a position of strength on a market characterised by imperfect information, they do not always find it in their interest to maintain high quality standards. When market failure is due to imperfect information, one answer is to use communication tools to improve the amount of consumer information on product quality. Business and government increasingly resort to tools such as advertising, labelling and marks to inform the public about the quality of agro-food products. Another answer is for producers to invest in building up a sound reputation with consumers. That reputation hangs both on product quality and on the tools to provide information about that quality.

80. Geographical denominations are just one of the communication tools used by governments and enterprises. A geographical denomination informs consumers about the origin of a product and the special characteristics that origin confers. Whether in the form of collective marks or appellations of origin, intellectual property rights have been recognised and geographical names protected. To date, the fact that there are different legal terms used to protect a geographical name, such as trademark and appellation of origin, has not always facilitated the recognition and the protection of such names in other countries.

81. In Section 2, viewing geographical indications from the competition standpoint, we highlighted a number of risks of anti-competitive practices. Three main types of risk were identified, *i.e.* monopolistic cartels, impediment for new entrants, and over-administration and over-regulation. While it is hard to judge the scale of such risks, some practices appear to be avoidable (especially those relating to production quotas). In fact competition authorities have seldom intervened, and then only in a few of the countries considered. This is because, with some exceptions, goods of designated origin are usually produced on a small scale and hold only a small share of the market. But any attempt to reintroduce a degree of competition in these sectors is important.

82. From the cross-border perspective, we have seen how the use of geographical denominations may give rise to disputes that could impede trade flows. As long as it is a geographical name that is being protected, and not a generic name, there is insufficient evidence to consider appellations of origin as non-tariff barriers to trade. While there is a risk that they impede market entry, it is not unlike the risk stemming from the best known trademarks.⁴³ They are all strategies of product differentiation, one of the most popular business strategies today. Yet the use of geographical names for agro-food products, in the

42. See Bagwell, K. "Informational product differentiation as a barrier to entry", *International Journal of Industrial Organisation*, n° 8, pp. 207-223.

43. See Bagwell on the theory of informational product differentiation as a barrier to market entry.

form of collective and certification marks or appellations of origin, has given rise to conflicts. This situation needs to be resolved by international regulations.

83. The signature of the TRIPS Agreement has improved the framework for the international regulation of geographical indications. For the first time, WTO Members have agreed on a definition for geographical indications and ensured that the WTO consultation and dispute settlement mechanism covers the protection of intellectual property rights under the TRIPS Agreement. Nevertheless there are still some open questions. The system for the notification and registration of geographical indications for wines and spirits, provided for under the TRIPS Agreement and still under negotiation, reflects the desirability of improving the reciprocal recognition and protection of geographical names in countries participating in this system. One question concerns the extension of the special protection provided by TRIPS to wine and spirits to other agricultural food products.

Possible future work

84. Analysis of the implications of alternative approaches to product differentiation for consumers, taxpayers, producers and food processors, in terms of benefits and costs, was beyond the scope of this paper. Further work in this area might be of interest.

85. Product differentiation strategies, including the use of geographical names, might be one element of rural development policy. No effort has been made to examine the possibility here, although related work is underway in the OECD Territorial Development Service.

*Annex 1.***Geographical indications and economic theory**

1. This section presents the elements of economic theory underpinning the use of distinctive product signs, such as geographical names, that are linked either to information theory or to Shapiro's model on reputation. The aim here is by no means to trace the history of these theories,⁴⁴ but to present the contributions of economists who have demonstrated the importance of (1) preventing the market distortions that arise when there is asymmetry of information between producers and consumers (and the importance of giving consumers more information) and (2) averting the consequences of such asymmetry of information on the level of output quality (and the need to protect producers' reputations).

Asymmetry of information and information theory

2. As distinctive signs, geographical names are considered in economic theory to be one of the potential instruments for resolving the market failure that stems from an asymmetry of information between producers and consumers. While economic theory has always deemed that access to information is a key element for economic players (with regard to options for consumption, investment, technology and so on), it is only since the 1960s that issues involving such access have been examined.

3. In the neo-classical model, producers and consumers have the access to all information. This is necessary for optimal allocation of resources. Moreover, because information is available at no cost, it has no economic value. In 1961, Stigler⁴⁵ asserted that information was a resource to which a value (and thus a cost) could be attributed. He decried the fact that this finding had been unknown to economists, who continued to presume that the best technology was always known, and that the relationship between goods and consumer preferences was a given. For the first time, the issue of access to information found its place in the debate on economic theory.

4. In 1970, Nelson⁴⁶ showed that consumers did not enjoy perfect access to information about the prices of goods, and that they had even less access to information about their quality. He distinguished between goods on the basis of how they convey information to the consumer: "search goods" as opposed to "experience goods". In the case of search goods, consumers can ascertain quality prior to purchase through a process of inspection and research. But there are other goods for which this search procedure does not work: in the case of experience goods, consumers prefer to buy them first and ascertain their quality

44. A number of articles on this subject are cited in the bibliography.

45. Stigler, G.J., "The Economics of Information", in the *Journal of Political Economy*, Volume 69, No. 3, June 1961.

46. Nelson, P., "Information and Consumer Behavior", in the *Journal of Political Economy*, Volume 78, March/April 1970.

afterwards. There is also a third category of goods “credence goods”⁴⁷ for which consumers can not fully ascertain the level of quality, even after they buy them.

5. The market for agro-food products features goods of all three types (search, experience and credence), even if a majority are in fact experience goods. This is because consumers like to form their own opinions of attributes such as flavour, how a product stands up when cooked, cooking time and so on. Some attributes are a combination of experience and credence: examples here include the level of safety and nutritional properties. Others are necessarily credence attributes, such as the extent to which the production process is environmentally friendly or treats animals humanely.

6. The distinction introduced by Nelson shows that resolving the problem of imperfectly functioning markets that arises from asymmetries of information is far from automatic. The problem of asymmetrical information stems from the fact that a producer knows the qualities of his products, whereas consumers do not know them and can know them only as a result of a search or experience. For consumers to be able to optimise their choices, the solution is to obtain more information. For one thing, they benefit from knowledge already acquired by other, better-informed consumers, and in addition they benefit from private or public initiatives (such as advertising, companies’ use of signs of quality or certificates of guarantee, regulation by the State, which decides to implement labelling policies, etc.).

7. The existence of asymmetries of information between producers and consumers has a wide series of consequences for producers, consumers and the way markets work. The producer, who is the only one to know the true quality level of his product, is therefore in a position of strength and may be tempted to behave unfairly, giving rise to situations of adverse selection and moral hazard. With regard to adverse selection, Akerlof presented his “model of lemons”⁴⁸ in 1970. In a market characterised by non-uniform products and services, in which qualitative differences are known to producers alone, two goods end up being sold for the same price. In this case, it is not in the interests of the makers of the higher-quality good to remain in the market. This is summed up in Akerlof’s model by the assertion that “bad cars drive out good”. Assuming that a product is present in a market having different qualities, and if in a transaction only one of the parties (the producer) knows the product’s quality level in advance, the other party (the consumer) must fear getting inferior product quality (as a consequence of adverse selection). With regard to moral hazard, products and services sold at the same price initially possess the same level of quality. This does not prevent a producer from subsequently selling his product with a lower level of quality while maintaining the same price. By doing so the producer can gain the difference between the market price and the lower production cost. Once again, the quality level of the total supply drops and the consumer is deceived.

8. From an analysis of the consequences of asymmetry of information on the consumer, it can be seen that consumers face the risk that their chosen products do not meet their expectations, and that the final utility of those products is therefore diminished. To protect themselves against this risk, consumers adopt a series of behaviours, including the tendency to consider price an indicator of quality. They are also prepared to pay a premium for reputation and assurance of a product’s quality (Boccaletti, 1992). Consumers tend to make repeat purchases even if they are not fully satisfied with a product; they develop strong loyalty to a small number of brands and sales outlets which heightens the risk that the latter may enjoy monopoly positions.

47. Darby, M. and Karni, E., “Free Competition and the Optimal Amount of Fraud”, in the *Journal of Law and Economics* (16), 1973, pp. 67-88.

48. Akerlof, A.G., “The Market for Lemons: Quality Uncertainty and the Market Mechanism”, in the *Quarterly Journal of Economics*, Vol. 84, August 1970, pp. 488-500.

9. The impact of asymmetry of information on the workings of the market is detrimental: the quality of total supply drops; higher-quality products are also driven out of the market, and some consumers will no longer be able to satisfy their preferences. Producers of quality products suffer unfair competition from those who sell inferior products at the same price.

The theory of reputation and possible responses to asymmetry of information

10. The market imperfection resulting from asymmetry of information can be partially corrected. In the early 1980s, the theory of information moved forward thanks to the contribution of Carl Shapiro⁴⁹ and his model on reputation. The author analyses the firm's choices as to the quality level of its production, with a view to maximising profits in a situation where it is assumed that markets are perfectly competitive but information is imperfect. Shapiro stresses the importance of the dynamics emerging among the following three elements: firm reputation, consumer learning⁵⁰ and the seller's choice of product quality.⁵¹ The concept of reputation is meaningful only in a context of imperfect information. If a product's attributes cannot be observed from the outset, consumers tend to use the quality of products offered by the same firm in the past as a proxy indicator. A company's decision to make high-quality products is therefore a dynamic one: the benefits of such a decision will be reaped only in the future, thanks to a well established reputation. Consumers always have expectations about the quality of a producer's output, and these expectations constitute the company's reputation.

11. It follows from this that a firm's quality policy has dynamic effects, and that a company is prompted to improve the quality of its output only if consumers undergo a sort of learning process regarding the quality of the firm's products. In cases where consumers make purchases on the basis of a product's reputation, a producer who decides to enter the market for high-quality goods is forced to invest in order to win that reputation. During this investment phase, the producer must sell his product below its production cost until the reputation is established. The need to make initial investments means that, in an equilibrium situation, high-quality goods must be sold at premium prices. The premium represents the returns on the initial investment to establish the reputation (Shapiro, 1983); it is also necessary so that the producer maintains his high level of product quality and is not tempted by a short-term strategy and by a reduction in the quality of his products.

12. The process of consumer learning and information is essential to Shapiro's theory: the sooner the consumer perceives a product's true quality, the smaller the differential between its marginal cost and the premium price. This differential, which causes a reduction in well-being as compared to a situation of perfect information, should not be considered a market failure, but rather as a cost stemming from the fact

49. Shapiro, C., "Consumer Information, Product Quality, and Seller Reputation", in the *Bell Journal of Economics*, 13 (1982): 20-35 and Shapiro, C., "Premiums for High Quality Products as a Return to Reputations", in the *Quarterly Journal of Economics*, Vol. 97, 1983, pp. 659-679.

50. For Shapiro, the process of consumer learning involves bringing expected quality towards true quality.

51. Shapiro, C., "Consumer Information, Product Quality, and Seller Reputation", in the *Bell Journal of Economics*, 13 (1982): 20-35.

that information is imperfect: costs arising from a lack of information are just as real as production costs (Shapiro, 1983). It follows that while there are advantages in terms of overall well-being to improving the level of consumer information, informational programmes have a significant cost; it is therefore necessary to strike a balance between these two elements.

Annex 2

Legislation on geographical indications and designations of origin in specific OECD countries

Australia

History and legal basis

1. A special regime to protect geographical indications was recently introduced in Australia, with the entry into force of the Agreement with the European Community on Trade in Wine. The term *geographical indication* in Australia covers both indication of provenance and designation of origin as no distinction has been made between the two either at the legislative level or in case law.

2. Trade Mark Act (1995).

The common law tort of passing off.

Provisions of the Trade Practices Act 1974 (Commonwealth).

Australian Wine and Brandy Corporation Regulations - Regulation 21.

Commerce Regulations.

Australian Wine and Brandy Corporation Act (1980), as amended by the AWBC Amendment Act in 1993.

International agreements

3. Australia is a Member of the Paris Convention for the Protection of Industrial Property. Australia has not signed the 1958 Lisbon Agreement for the Protection of Appellations of Origin, or the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods. Agreement between the European Community and Australia on Trade in Wine. Australia has signed the TRIPS Agreement.

4. Trade Marks Act 1995 (Cth). Section 6 contains a definition for geographical indication. "Geographical indication in relation to goods originating in a particular country or in a region or locality of that country, means a sign recognised in that country as a sign indicating that the goods: (a) originated in that country; (b) have a quality, reputation or other characteristics attributable to their geographical origin. Section 61 deals with trademarks that contain or consist of a false geographical indication. Section 61.1 states that "The registration of a trade mark in respect of particular goods ("relevant goods") may be opposed on the ground that the trademark contains or consists of a sign that is a geographical indication for goods (designated goods) originating in: (a) a country, or in a region or locality in a country, other than the country in which the relevant goods originated; (b) a region or locality in the country in which the relevant goods originated other than the region or locality in which relevant goods originated". Section 61.2 states that an opposition based on Section 61.1 fails if the applicant establishes that: "(a) the relevant goods originated in the country, region or locality identified by the geographical indication; (b) the sign has ceased to be used as a geographical indication for the designated goods in the country in which the designated goods originated; (c) the applicant (...) used the sign in good faith in respect of the relevant

goods, or applied in good faith for the registration of the trade mark in respect of the relevant goods before (i) 1 January 1996 or (ii) the day on which the sign was recognised as a geographical indication for the designated goods in their country of origin". Section 61.3 states that an opposition based on Section 61.1 fails if the applicant establishes that: "(a) although the sign is a geographical indication for the designated goods, it is also a geographical indication for the relevant goods; (b) the applicant has not used, and does not intend to use, the trade mark in relation to the relevant goods in a way that is likely to deceive or confuse members of the public as to the origin of the relevant goods". Geographical indications may apply for registration as marks of certification. This may relate to materials, method of production, quality, etc., but also to geographical origin. A certification mark may not be registered under the name of a person trading the registered product. Producers from a specific geographical area who wish to guarantee the provenance of their products can form an association which may then apply for registration. A geographical indication used as a generic term may not be registered as a certification mark. The application submitted to the Registrar of Trade Marks must contain a series of rules relating to the use of the mark and showing that the body applying for registration is competent to certify the products. This solution has been adopted by a number of regional wine-growing associations to protect the names they use.

5. *The common law provisions on passing off.* An action against passing off is a means of protecting goodwill. Generally speaking, a producer who passes off his products as those of another producer undermines the goodwill that the latter has built up over the years. The principle of free competition restricts the scope of an action for passing off, but in Australia -- unlike the United States -- the plaintiff and the defendant do not necessarily have to be competitors. This makes it possible to penalise free-loading, such as using the reputation of one's product to sell another (for example, using the name Champagne for cigarettes or perfume). A false claim and the damage it causes are necessary and sufficient conditions for an action against passing off. This requires a foreign producer wishing to protect his quality mark to provide evidence of his reputation in the country. It is up to the plaintiff to provide evidence of damage or possible damage.

6. *Provisions of the Trade Practices Act 1974 (Cth).* Article 52 of this Act prohibits conduct by business which is misleading or deceptive, or which is likely to mislead or deceive. Article 53, in particular, prohibits false or misleading claims about the place of origin of goods. These provisions are designed to protect consumers and companies can be sued, in many cases by private individuals. Article 70 of the Act obliges goods sold under a specific designation to comply with that designation. Suppliers are therefore obliged to compensate consumers for damage suffered if goods fail to correspond to their designation.

7. *Australian Wine and Brandy Corporation Regulations.* Regulation 21 stipulates that when the name or designation of a wine mentions the locality where the grapes used in the wine were grown, at least 85 per cent of all grapes used must be from that locality.

8. *Commerce Regulations.* These prohibit the importation into Australia of any product containing false trade descriptions.

9. *Agreement between the European Community and Australia on Trade in Wine*, signed in December 1992. "Geographical indication shall mean an indication (...), including an 'Appellation of Origin', which is recognised in the laws and regulation of a Contracting Party for the purpose of the description and presentation of a wine originating in the territory of a Contracting Party, or in a region or locality in that territory, where a given quality, reputation or other characteristic of the wine is essentially attributable to its geographical origin." On the basis of this definition, the Contracting Parties undertake to comply with the geographical indications and the oenological practices and compositional requirements. More specifically, the geographical indications protected under the Agreement are those that respect the

above definition, are recognised by the laws of the Contracting Party, and are specified in Annex II of the Agreement. The Annex contains a list of geographical indications to be protected, including European names already protected under Community law, and Australian names that have been protected by the revision of existing laws. Article 7 of the Agreement lists protected names (by type of name). Under Article 6, “Contracting Parties shall take all measures necessary ... for the reciprocal protection of the names referred to in Article 7... (and) provide the legal means for interested parties to prevent use of a traditional expression or a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question. (This protection).. also applies to names even where the true origin of the wine is indicated or the geographical indication or traditional expression is used in translation or accompanied by expressions such as ‘kind’, ‘type’, ‘style’ ‘imitation’, ‘method’ or the like”. There are transitional arrangements for specific European geographical indications to be phased out in Australia. The Agreement also covers mutual recognition of traditional expressions.

10. *Australian Wine and Brandy Corporation Act as amended by the Australian Wine and Brandy Corporation Amendment Act 1993*, which entered into force in October 1994. The purpose of this legislation is to enable Australia to fulfil its obligations under international agreements, such as the EC/Australia Wine Agreement. It gives the following definition of geographical indication: “*geographical indication in relation to wine means: (a) a word or expression used in the description and presentation of wine to indicate the country, region or locality in which the wine originated; or (b) a word or expression used in the description and presentation of the wine to suggest that a particular quality, reputation or characteristic of the wine is attributable to the wine having originated in the country, region or locality indicated by the word or expression.*”

11. It provides criteria to determine the boundaries of the various Australian wine-making regions and localities that are associated with geographical indications; it also establishes a Geographical Indications Committee, whose function is to determine such indications. The Act stipulates that wine originates where the grapes are grown, not where the winery is located. It also sets up a Register of Protected Names, administered by the Australian Wine and Brandy Corporation, to register details of Australian geographical indications as well as other countries’ indications as recognised by agreements. Traditional names and other expressions accepted in the Agreement can also be registered. Provision is further made for geographical indications and traditional expressions from non-agreement countries to be entered.

Canada

History and Legal basis

12. Canada has a number of laws providing protection for geographical indications, generally. These include the Canadian *Trade-marks Act*, the Common Law tort of passing off, the Québec Civil Code, and the *Competition Act*.

13. Enhanced protection is provided to wines and spirits. These provisions enable a responsible authority to request that a geographical indication be placed on a protected list. Examples of geographical indications in Canada for wines and spirits include *Okanagan Valley*, *Niagara Peninsula*, *Pelee Island*, *Bernkasteler Kurfürstlay* and *Scotch Whiskey*.

International agreements

14. Canada is a party to the North American Free Trade Agreement (NAFTA) and is a member of the TRIPS Agreement.

Trade-Marks Act

15. The *Trade-marks Act* prohibits making use, in association with wares or services, of any description that is false in a material respect and likely to mislead the public as to the geographical origin of the wares or services. The *Trade-marks Act*, where requirements of the Act are met, also allows those having rights in geographical indications to apply for protection as a registered trademark and offers the possibility of obtaining a certification mark. Examples of certification marks include Grana Padano, an Italian cheese; Frieburger, a Swiss cheese; and Florida for Floridian oranges and related products.

The Common Law Tort of Passing Off

16. The plaintiff must prove that his or her goods or services have acquired a reputation or goodwill, that the defendant is trading on that reputation or goodwill, and that damages are being or may be suffered as a result. The award in such cases is monetary compensation and/or an injunction. This remedy is available in the common law provinces and territories. In the province of Québec there is similar protection provided under Article 1457 of the Civil Code of Québec.

Wines and spirits

17. The *Trade-marks Act* provides for a list of geographical indications for wines and spirits to be kept under the supervision of a Registrar (in the same way that the Registrar supervises the Trade-mark Registry). Whomever has registered the geographical indication on this list is entitled to the special protection provided under the *Trade-marks Act*.

Definitions

18. Geographical indications for wines and spirits are defined in the *Trade-marks Act*, as follows:

"geographical indication" means, in respect of a wine or spirit, an indication that

- a) identifies the wine or spirit as originating in the territory of a WTO Member, or a region or locality of that territory, where a quality, reputation or other characteristic of the wine or spirit is essentially attributable to its geographical origin, and

b) except in the case of an indication identifying a wine or spirit originating in Canada, is protected by the laws applicable to the WTO Member".

Registration procedure

19. Applications for additions to the list of geographical indications are examined for compliance with the *Trade-marks Act* based on the following criteria:

- a) The geographical indication must identify a wine or spirit originating in the territory of a WTO member (including Canada), or a region or locality of that territory.
- b) The geographical indication must be officially recognised
and protected by the applicable laws in that WTO member. It is up to the applicant to provide evidence of this, including the effective date of recognition in the country of origin. It should be clear that the country of origin provides the legal means to prevent the misuse of the geographical indication in the application being submitted.
- c) The responsible authority must demonstrate that, by reason of state or commercial interest, it is sufficiently connected with and knowledgeable of the wine or spirit to be party to any proceedings in respect of an objection filed under the *Trade-marks Act*. Responsible authorities may be national bodies as well as private enterprises or regional associations.
- d) There must be a demonstration that there is a "quality, reputation or other characteristic of the wine or spirit that is essentially attributable to its geographical origin." This aspect of the review considers, among other things, the following principles:
 - i) as it concerns wines, the geographical indication:
 - is recognised as being linked to a quality or a characteristic of the product attributed to its geographic milieu, including natural or human factors; and
 - is allowed to be used only if the harvesting of the grapes took place in the country, region, place or area defined.
 - ii) as it concerns spirits, the geographical indication:
 - is recognised as being linked to a quality or a characteristic which the product acquires at the time of a decisive phase of its production; and
 - is allowed to be used only if the decisive phase takes place in the country, region, place or area defined.

20. With the authorisation of the Minister of Industry, geographical indications that meet the necessary criteria are published in the *Canada Gazette*. Within three months of that publication, any interested person may file a statement of objection with the Registrar and the responsible authority. The grounds for objections are extremely limited. If no objection is filed during this process, the Registrar of Trade-marks enters the indication on the list of geographical indications. Once the geographical indication is on the protected list, its misuse can be challenged by way of civil action in the courts.

Korea

21. The first geographical indications scheme to be introduced in Korea was for ginseng. A recent law introduces a broader scheme covering any agricultural and fishery products requiring protection.

History and legal basis

Ginseng Industry Act (July 1996)

22. Since 1996 it has been possible to register geographical indications for ginseng. Any grower or processor wishing to register the names 'Korea Ginseng', 'Korea Raw Ginseng', 'Korea White Ginseng' or 'Korea Red Ginseng' must apply to the *National Agricultural Products Inspection Service* or the Federation of Ginseng Co-operatives. The raw material (ginseng seed) must be grown in Korea to obtain the designation 'Korea Raw Ginseng'. For the designations 'Korea Red Ginseng' or 'Korea White Ginseng', the product must be processed in Korea from local raw material. The designation is a national one (Korean ginseng).

23. In June 1998, 417 enterprises were listed as ginseng manufacturers.

Agro-Fishery Products Quality Management Act (December 1998)

24. This Act lays the foundations for a broader system of geographical designations applicable to all agricultural or fisheries products, be they raw materials or processed goods. The Act came into force on 1 July 1999.

25. For an agri-food or fishery product to obtain a geographical designation, its renown, quality and characteristics must be attributable to the geographical character of the area of origin. Quality must be optimal, whether based on standards in the Act or non-standardised custom. The product must be entirely processed in the region indicated, and the name must refer to the administrative area, mountain area, river or sea that affects the character of the product concerned.

Registration/inspection

26. Producers who wish to use geographical indications must register the product with either the Ministry of Agriculture and Forestry (agricultural produce) or the Ministry of Maritime Affairs and Fisheries (fishery products). Producers must guarantee that their products comply with legal standards before the Committee for Geographical Indication Registration makes a final decision as to the validity of their applications. Once a product's geographical indication has been registered, it must be used throughout the marketing process. The authorities concerned may conduct tests on samples of such products once they have entered the marketing process (i.e. once they have been labelled).

United States

History and legal basis

27. The United States has a number of laws providing protection for geographical indications. There is a system specifically designed to recognise designations of origin for wines and spirits. Some examples of US geographical indications for agricultural products are: Idaho potatoes, Florida oranges and Wisconsin cheese.

Federal legislation

28. Trademark Act of 1946 (Lanham Act), amended in 1988.

- Amendments to the Trademark Act in the North American Free Trade Agreement Implementation Act, approved in 1993 and in force since January 1994.
- Section 43(a) of the Lanham Act.

29. Uruguay Round Agreement Act, December 1994.

Code of Federal Regulations, Title 27 “Alcohol, Tobacco Products and Firearms”, Chapter 1, Part 4: Labelling and Advertising of Wine.

International agreements

30. The United States Government has not signed the 1891 Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, nor the 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. The United States is a party to the Paris Convention for the Protection of Industrial Property.

31. The United States Government has signed the TRIPS Agreement. The United States Government is a party to the NAFTA Agreement (of which Article 1712 provides the means to prevent the use and registration of a geographical indication that could mislead the public).

The Trademark Act and certification marks

The Trademark Act

32. Following the NAFTA Agreement, the North American Free Trade Agreement Implementation Act was approved in 1993 and came into force in January 1994. It revised Section 2 of the Trademark Act regarding geographical indications.

33. Section 2(e)(3) of the Trademark Act, 15 U.S.C. §1052(e)(3), prohibits registration in either the Principal Register or the Supplemental Register of a mark which is primarily geographically deceptively misdescriptive of the goods or services named in the application. If it is demonstrated that the mark was distinctive of the applicant’s goods or services prior to 8 December 1993, however, it may be registered in the Principal Register [Section 2(f)]. If the mark has been in lawful commercial use by the same owner prior to 8 December 1993, it may be registered in the Supplemental Register (Section 23, 15 U.S.C. §1091).

34. Before a geographical indication can be registered as a trademark, it needs to be determined on a case by case basis whether the term is used as a geographic designation or as a last name (*primarily*

geographically), whether it misdescribes the origin of the good (*misdescriptive*) and whether consumers are deceived by such use (*deceptively*).

Certification marks

35. While the Trademark Act dates back to 1905, certification marks were not expressly defined and protected until 1946 (in the Lanham Act). Section 45 gives the following definition: “The term ‘certification mark’ means any word, name, symbol, or device, or any combination thereof,

(1) used by a person other than its owner, or

(2) which its owner has a *bona fide* intention to permit a person other than the owner to use in commerce and files an application to register on the principal register established by this Act;

to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person's goods or services or that the work or labour on the goods or services was performed by members of a union or other organisation.” The Lanham Act now authorises the registration of trademarks (and certification marks) on the basis of intention to use.

36. *Section 43(a) of the Lanham Act* allows a civil action to be brought by any person “who believes that he or she is or is likely to be damaged” by “any false designation of origin” “in connection with any goods or services” or “in commercial advertising or promotion”. For a trademark or certification mark to be protected under Section 43(a) it must have been registered at federal level.

Definitions

37. The United States has accepted the NAFTA definition of geographical indication, i.e. any indication that identifies a good as originating in the territory of a Party to the Agreement, or a region or locality in that territory, where a particular quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

38. The United States has accepted the definition of geographical indication contained in the TRIPS Agreement.

Wines

39. *Uruguay Round Agreement Act*. This Act includes Section 522 on the “non-registrability of misleading geographical indications for wines and spirits”. Subsection (a) of Section 2 of the Trademark Act of 1946 [15 U.S.C. 1052(a)] is amended to read as follows: “No trade-mark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it (a) Consists of or comprises immoral, deceptive, or scandalous matter; ... or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods and is first used on or in connection with wines or spirits by the applicant on or after one year after the date on which the WTO Agreement ... enters into force with respect to the United States”.

40. In the mid-1970s the United States Government, via the Bureau of Alcohol, Tobacco and Firearms (BATF)⁵², proposed for the first time draft regulations to introduce a system of identification and

52. In the Treasury Department, the Bureau of Alcohol, Tobacco and Firearms deals with the labelling and advertising of wines.

delimitation of specific wine-growing areas. The purpose of the BATF regulations is to inform consumers about the origins of wine and prevent consumer deception. The Bureau therefore governs matters concerning appellations of origin, distinguishing between those referring to ‘viticultural areas’ and those referring to political subdivisions. Section 4.25a of Title 27 of the U.S. Code of Federal Regulations defines the conditions under which wine may qualify to be labelled with an appellation of origin. An American wine is entitled to an appellation of origin (other than a multicounty or multistate appellation, or viticultural area) if at least 75 per cent of the wine derives from grapes grown in the appellation area indicated; there is no legal obligation to provide evidence of the specificity of the area’s viticultural features. For appellations of origin referring to ‘viticultural areas’, the BATF requirements are stricter in that not less than 85 per cent of the volume of the wine must be derived from grapes within the boundaries of the viticultural area, and which must display specific geographical characteristics. The wine must be entirely fabricated in the area designated by its appellation of origin. Any wine-growing area may apply for the status of viticultural area. To do so, it must submit evidence that the name of the area is locally and/or nationally known as referring to the area specified in the application; historical or current evidence that the boundaries are as specified in the application; evidence relating to the geographical features (climate, soil, elevation, physical features) which distinguish it from surrounding areas; and boundaries such as those found on United States Geological Survey maps. A viticultural area is thus a “delimited grape-growing region distinguishable by geographical features”. Under federal law, quality control is left to local legislation.

41. The BATF regulations categorise designations of geographic significance into three groups, *generic*, *semi-generic* and *non-generic*. “A name of geographic significance which is also the designation for a class or type of wine shall be deemed to have become generic only if so found by the Director”⁵³. The examples of generic designations given are *vermouth* and *saké*. “A name of geographic significance which is also the designation for a class or type of wine shall be deemed to have become semi-generic only if so found by the Director”⁵⁴. Semi-generic names retain their geographic significance when used to designate another category or type of wine. A semi-generic term is a name of geographical significance, which has become known to consumers as the designation of a class or type of wine. “Semi-generic designations may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine”⁵⁵. BATF also gives a list of names as examples of semi-generic designations⁵⁶. It acknowledges the existence of non-generic designations that may be used only to designate wines of the origin indicated by such name. To be included in this list the Director of BATF must find “that (the name) is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines”⁵⁷. Geographical indications may be distinctive designations of specific wines (Bordeaux Blanc; Bordeaux Rouge, etc.) or non-distinctive designations (American; California).

42. The quality of wines, and other products, can of course be protected by certification marks.

53. Code of Federal Regulations (CFR) 27CFR4 24 (a) 1:2.

54. 27CFR4 24 (b) 1:2.

55. Ibid.

56. In Section 5.2.

57. 27CFR4 24 (c) 1.

Japan

History and legal basis

43. Prevention of Unfair Competition Act, promulgated in 1934 to implement the Madrid Agreement.

Administrative controls.

Japanese Customs Act.

Antitrust Act.

JAS System, based on the Act Concerning Standardisation and Proper Labelling of Agricultural and Forestry Products.

Act on Trademarks and the Protection of Geographical Indications for Wines.

International agreements

44. Japan has signed the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods.

45. *Prevention of Unfair Competition Act* (Article 1): any person has the right to apply to the courts for the cessation of a number of acts likely to damage his or her commercial interests. These include “the application to goods, or use in advertisements relating thereto, of false indications as to the origin of the goods concerned, (...) the sale, distribution or export of goods bearing such indications, which may mislead the public as to their place of origin; the application to goods, or use in advertisements relating thereto, of deceptive indications suggesting that the said goods are obtained, produced or processed in a place other than that in which they are effectively obtained, produced or processed (...)”. This Act does not give exclusive rights to use a geographical indication, but endeavours to restrict cases in which such use may be misleading as to the source of the goods.

46. *Administrative controls*: a number of administrative regulations apply to geographical indications. The 1952 Export and Import Trade Act, for instance, enforced by the Ministry of International Trade and Industry, refers explicitly to the export of goods carrying false geographical indications of origin as an unfair practice.

47. *Japanese Customs Act*: prohibits the importation of products which, directly or indirectly, carry a false or misleading indication of origin.

48. *Antitrust Act*: dates back to 1947. Within the framework of this Act, the Fair Trading Commission (FTC) promulgated in 1962 a special law against unjustifiable premiums and misleading representations. It prohibits any indication which, when placed on goods made in Japan, is liable to make it difficult for consumers to establish whether such products have effectively been produced in that country (e.g. an indication including the name of a foreign country; name or mark of a foreign entrepreneur). It also prohibits any indication which, when placed on products made in a foreign country, is liable to make it difficult for consumers to establish whether such products have effectively been produced in the said foreign country (e.g. indication referring to a country other than that in which the product originated; name or mark of an entrepreneur from a country other than that in which the product originated).

49. Two components make up the *Japanese Agricultural Standard* (JAS) System, both of which are based on the law Standardisation and Proper Labelling of Agricultural and Forestry Products (Law N.175 of 1950). The first is the JAS Standards System and the second is Quality Labelling System. The JAS Standards System is voluntary. Under this system, JAS Standards were elaborated in an attempt to promote

improvement of quality, rationalisation of production, fair and simplified trade, and the reasonable use or consumption of agricultural and forest products. The products accepted by JAS Standards may display the JAS symbol once they have passed inspection under the relevant provisions established by the Ministry of Agriculture, Forestry and Fisheries. A new type of JAS standard was introduced in 1993, for products made according to special production methods.

50. The *Quality Labelling System* was established to oblige manufacturers and distributors to respect quality labelling standards. It applies to all agricultural and forest products awarded the JAS symbol, but also to a number of other agricultural and forest products whose quality cannot be easily judged by consumers (e.g. NIPPANHIN, fruits and vegetables). The Ministry draws up “quality labelling standards” for these products, with which producers, processors and distributors must comply. However, in view of growing consumer concern with respect to food products, it is increasingly important to make accurate information generally available. So the law was amended to establish general standards for quality labelling for all food and beverages for the consuming public. Additional information may be required, depending on the properties of each item. The onus is laid on the manufacturers in some cases and on distributors in other cases to comply with the obligation for labelling; such responsibility depends on the mode of distribution.

51. *Quality Labelling Standards* have been established for processed foods and perishable food. For the perishable group, the name of the product, its place of origin and other information are to be indicated on the packaging, container or other prominent location, such as bulletin boards, for the consumer to read. For processed foods, the name of the product, its ingredients, its shelf life and other information are to be included on the labelling, which will be affixed to the packaging or container.

Institutions involved

52. Ministry of Finance (Customs Office) and Ministry of International Trade and Industry; Fair Trading Commission; Japanese Patent Office; Ministry of Agriculture, Forestry and Fisheries.

Registration

53. In Japan, the principle of registration is provided for in the Trademarks Act, and geographical indication is one of the factors considered by the Patent Office when deciding whether to register a trademark.

Wines

Act on Trademarks and the Protection of Geographical Indications for Wines

54. *Japanese Patent Office.* The Japanese Patent Office draws up a list of wines of Japanese origin that are protected under Japan’s Trademarks Act. Under the Act, the registration of a trademark may be refused or revoked if it uses a geographical indication for a wine or spirit that does not originate in the said geographical area. Any designation of origin registered internationally under Article 5/1 of the Lisbon Agreement may be registered in Japan.

Switzerland

History and legal basis

55. Switzerland's legislation on registered designations of origin and geographical indications dates back only two years, although in 1962 the Ordinance regulating the names of Swiss cheeses did establish a sectoral register for cheeses that included designations of origin and geographical indications. The 1997 Ordinance, together with Article 16 of the Agriculture Act, constitute the legal basis for the protection and registration of geographical designations for all agricultural products except wine. The sole purpose of this legislation is to protect geographical names, the regional development aspects being viewed merely as possible side effects. Prior to this Ordinance, geographical indications were protected by federal legislation on the protection of trademarks and indications of provenance.

56. *Ordinance of 28 May 1997* on the protection of designations of origin and geographical indications for agricultural products and processed agricultural products.

57. *Article 16 of the Agriculture Act* of 29 April 1998, establishing a register for designations of origin and geographical indications and regulating the link between such denominations and generic names, the link between such denominations and trademarks and their protection against misuse.

58. Federal Law on the protection of trade marks and indications of provenance (RS 232.11).

59. Ordinance of 7 December 1998 on viticulture and the importation of wine.

Definitions

60. "May be registered as *designation of origin* the name of a region or place used to describe an agricultural product or a processed agricultural product originating in that region or place, the quality or characteristics of which are essentially or exclusively due to the geographical environment, including its inherent natural and human factors, and the production, processing and preparation of which take place in a specified geographical area. *Traditional names* for agricultural products that fulfil these conditions may be registered as designations of origin".

61. "May be registered as *geographical indication* the name of a region or place used to designate an agricultural product or a processed agricultural product from that region or place; of which a specific quality, reputation or other characteristic is attributable to that geographical origin; and the production, processing or preparation of which take place in a specified geographical area." (Sections 1.1 and 2.2 of the Order on PDOs and PGIs).

Institutions involved

62. The *Federal Office for Agriculture (OFAG)* reviews applications from producer groups and decides whether a name will be registered.

63. The *Federal Commission for PDOs and PGIs* was set up in 1998 by the Federal Department of the Public Economy. It reviews applications, forwards a preliminary opinion to OFAG and advises the competent authorities on steps to be taken to protect registered names. It is the only government institution specifically for PDOs and PGIs.

64. *Certification bodies* verify compliance with product specifications and must notify any irregularities.

65. There are no regional services specifically for PDOs and PGIs, but the *cantonal authorities* for the product concerned may give their opinion on an application.

Registration/inspection

66. Producer groups submit applications for registration to the Federal Office for Agriculture (OFAG), as specified in the Ordinance. The producers in the region concerned must, for instance, form an association. They must also define their product, describe the production method and establish the boundaries of the relevant geographical area in a product specification. They must also provide details bearing out the link between the product and the relevant geographical area.

67. Any group applying for the registration of a PDO or PGI must contact a certification body. This in turn must certify the process used to produce, process and prepare the product. The certifying body must be accredited according to European standard EN 45011⁵⁸, regardless of whether it is private or public.

68. OFAG reviews the application and decides whether or not to register the product, taking into consideration the opinion of the Federal Commission for PDOs and PGIs. The relevant cantonal authorities may also give their opinion. If the application is accepted, it is published in the *Feuille officielle suisse du commerce*⁵⁹. Anyone opposing the decision has three months to come forward. The registration is then published in the same journal.

Wines

69. The *Ordinance on viticulture and the importation of wine* of 7 December 1998 makes the distinction, in Section 3, dealing with designations and classification, between designation of origin (*appellation d'origine*) and controlled designation of origin (*appellation d'origine contrôlée*). It is for the cantons to keep a list of the production areas relating to their designations of origin.

70. *Appellation d'origine* (designation of origin) designates the grapes, grape musts or quality wines recognised as coming from a geographically determined area such as a canton, region, commune, locality, château or domain (Article 10/1). Wines with a designation of origin must be made exclusively from grapes harvested in the geographical area concerned and meeting the requirements laid down for this category⁶⁰ (Article 10/2).

71. *Appellation d'origine contrôlée* (controlled designation of origin) designates recognised grapes, grape musts or quality wines, meeting the requirements set out for *appellation d'origine* but also further requirements laid down by the canton. These relate at least to production boundaries, vine varieties, growing methods, natural sugar content, maximum yield per unit area, wine production methods, analytical and organoleptic tests (Article 11/1)

58. European standard laying down the general criteria for product certification bodies.

59. There is no public investigation prior to the national authority's decision. No experts are specifically commissioned to identify area boundaries or draw up product specifications.

60. Article 14 classes wines into different categories according to their basic natural sugar content and according to yield per unit area.

European Union

Horizontal legislation

72. Commission Directive No 70/50/EEC of 22 December 1969

Council Directive No 79/112/EEC of 18 December 1978 (and amendments) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer

1984 Directive concerning misleading and unfair advertising.

First Council Directive No 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks.

Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁶¹, amended by Regulation (EEC) 535/1997.

Council Regulation (EEC) No 2082/92 on certificates of specific character for agricultural products and foodstuffs.

Council Regulation (EC) No 40/94 on the Community trade mark.

Council Regulation (EEC) No 3288/94 amending Regulation (EC) No. 40/94 on the Community trade mark.

Vertical legislation (designations for wine, wine products and spirit drinks)

73. Council Regulation (EEC) No 822/87 on the common organisation of the market in wine.

Council Regulation (EEC) No 823/87 of 16 March 1987 laying down special provisions relating to quality wines produced in specified regions (Article 15.4)⁶².

Council Regulation (EEC) No 4252/88 on the preparation and marketing of liqueur wines.

Council Regulation (EEC) No 1576/89 laying down general rules on the definition, description and presentation of spirit drinks.

Council Regulation (EEC) No 2392/89 laying down general rules for the description and presentation of wines and grape musts.

Council Regulation (EEC) No 1601/91 on aromatized wines.

Regulation (EC) No 3378/94 of the European Parliament and of the Council of 22 December 1994 amending Regulation (EEC) No 1576/89 laying down general rules on the definition, description and presentation of spirit drinks and Regulation (EEC) No 1601/91 on aromatized wines following the Uruguay Round of the multilateral trade negotiations.

Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine⁶³.

61. Wine products and spirit drinks are explicitly excluded from the scope of this Regulation as they are already covered by Community legislation.

62. Amended by Council Regulation (EEC) 2043/89 of 19 June 1989.

63. This Regulation came into force on 1 August 2000.

Horizontal legislation

74. Commission Directive 70/50/EEC. This prohibits the use of names that might constitute measures restricting trade between Member States: “measures which reserve exclusively to domestic goods names which are neither designations of origin nor indications of provenance”.

75. *1978 Directive No 79/112*. Under Article 2(a)1, “The labelling and methods used must not be such as could mislead the purchaser to a material degree, particularly as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, (...) origin or provenance”.

76. *1988 First Council Directive relating to trade marks*. This prohibits the registration of trade marks liable to mislead the public as to the origin of goods or services.

Council Regulation (EEC) No 2082/92 on certificates of specific character for agricultural products and foodstuffs.

77. This provides for the award of certificates of special character (and the label Traditional Speciality Guaranteed, or TSG). It does not refer to origin but is intended to highlight a traditional composition or production method. A scheme to provide legal protection for such certificates has been introduced at the European level.

Definitions

Certificate of specific character

78. “Specific character” means the feature or set of features which distinguishes an agricultural product or a foodstuff clearly from other similar products or foodstuffs belonging to the same category. In order to appear in the register of certificates of specific character, an agricultural product or foodstuff must either be produced using traditional raw materials or be characterised by a traditional composition or mode of production and/or processing reflecting a traditional type of production and/or processing (Articles 2 and 4).

Institutions involved

79. Producers and/or processors, who must form a group in order to be entitled to apply for registration.

The competent authority in the country concerned (which may vary depending on the Member State).

The European Commission, which registers certificates of specific character once the procedure has been completed (see above).

The committee composed of representatives of Member States, which assists and delivers opinions to the Commission.

The inspection structures and authorities set up at the national level.

Registration

80. The Commission sets up and administers a register of certificates of specific character. In order to qualify, the product must comply with a product specification including at least the name of the product, a description of the method of production, the nature of the raw materials, and aspects allowing appraisal of its traditional character. Only a group of producers and/or processors working with the same agricultural product is entitled to submit an application for registration to the competent authority of the Member State. The competent authority forwards the application to the Commission if it considers that the requirements

laid down by the Regulation are fulfilled. The Commission forwards the application for registration to the other Member States and publishes the main points in the Official Journal of the European Communities, so that the opposition procedure may take place. This means that any natural or legal person legitimately concerned by the intended registration may object to it. Once the procedure has been completed -- or if no objections are notified to the Commissions with six months -- the Commission proceeds with the registration of the certificate of specific character and its publication in the Official Journal of the European Communities.

Inspection

81. Member States must ensure that inspection structures are in place to ensure that products carrying a certificate of specific character meet the criteria laid down in the specifications. Each Member State must designate one or more inspection authorities and/or private bodies approved for that purpose. These authorities and bodies must offer adequate guarantees of impartiality and have the resources necessary to carry out inspections.

Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

82. This provides for the registration of a “protected designation of origin” or a “protected geographical indication” and a legal system of protection against misuse that operates at the European level. The link with a defined geographical area is strict for designations of origin, but less so for geographical indications.

Definitions

Designation of origin

83. The name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country **and** the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area.

84. Also considered as designations of origin are certain traditional geographical or non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place and which fulfil the conditions referred to above (Article 2, paragraphs 2a and 3).

Geographical indication

85. The name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country, and which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production *and/or* processing *and/or* preparation of which take place in the defined geographical area.

Institutions involved

86. Producers and/or processors, who must form a group in order to be entitled to apply for registration.

The competent authority in the country concerned (which may vary depending on the Member State).

The European Commission, which registers certificates of specific character once the procedure has been completed (see above).

The committee composed of representatives of Member States, which assists and delivers opinions to the Commission.

The inspection structures and authorities set up at the national level.

Registration

87. The Regulation included an initial stage whereby a simplified registration procedure would apply to names protected in individual Member States prior to 26 January 1994, when Member States were to notify the Commission of any names enjoying statutory protection or, where there was no protection scheme, names established by usage. 459 products (306 PDOs and 153 PGIs) were registered in this way. Under the simplified procedure, the review of names by the Commission did not include a formal opposition procedure. Appeals were lodged directly with the Court of Justice.

88. Under the normal procedure a group or a natural or legal person is entitled to apply for registration. The application must include the product specifications, namely the name of the product, a description of the product including the raw materials and principal characteristics of the product; the definition of the geographical area; a description of the method of obtaining the product ; the details bearing out the link with the geographical environment or the geographical origin; details of the inspection structures; and specific labelling details relating to the indication PDO or PGI. The application for registration must be submitted to the competent authority in the Member State, which forwards it to the Commission once it has checked that it satisfies the requirements of the Regulation. The Commission undertakes an investigation and, if it concludes that the name qualifies for protection, it publishes in the Official Journal of the Communities the main points of the application, so that the opposition procedure may take place. This means that within a period of six months any Member State may object to the registration. At the same time, any legitimately concerned natural or legal person may object to it through the competent authority in his Member State. Once the opposition procedure is over, or if no objection has been made to the Commission within six months, the name is entered in a "Register of protected designations of origin and protected geographical indications".

Inspection

89. Article 10: Member States ensure that inspection structures are in place (...), their function being to ensure that agricultural products and foodstuffs bearing a protected name meet the requirements laid down in the specifications. An inspection structure may comprise one or more designated inspection authorities and/or private bodies approved for that purpose by the Member State. Designated inspection authorities and/or approved private bodies must offer adequate guarantees of objectivity and impartiality (...) and have permanently at their disposal the qualified staff and resources necessary to carry out inspection of agricultural products and foodstuffs bearing a protected name. As from 1 January 1998, in order to be approved by the Member States for the purposes of this Regulation, private bodies must fulfil the requirements laid down in standard EN 45011⁶⁴ of 26 June 1989. The costs of inspections provided for under this Regulation are borne by the producers using the protected name.

64. European standard laying down the general criteria for product certification bodies.

90. *Council Regulation (EC) No 40/94 on the Community trademark.* Community legislation does not exclude the possibility of a geographical name being registered as a trademark, but it does not mention this explicitly in Article 4⁶⁵. The requirements to be met for registration are that the geographical indication be capable of distinguishing the good for which registration is requested and that it should not deceive the public. Article 7(1)(c) restricts this by laying down absolute grounds for refusal for “marks that consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, (...), geographical origin or (...) other characteristics”. A geographical indication may be registered as a collective mark. This is defined in Article 64(1) as a mark “which is capable of distinguishing the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings. Associations of manufacturers, producers, suppliers of services, or traders which (...) have the capacity in their own name to have rights and obligations of all kinds (and) to make contracts (...) may apply for Community collective marks.” Furthermore, Article 64(2) stipulates that “In derogation from Article 7(1)(c), signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute Community collective marks”. However, such a mark may not be invoked against a third party who is entitled to use a geographical name.

91. Council Regulation (EEC) No 3288/94 amends Regulation (EC) 40/94 on the Community trademark. In particular, Article 7.1 now expressly prohibits the registration of a geographical indication to identify wines or spirit drinks that do not have that origin.

Vertical legislation: wine

92. Community regulations distinguish between quality wines and table wines⁶⁶. Table wines are produced without any restrictions on yield and the production areas are not usually demarcated. For quality wines psr, the production requirements are very strict, including demarcation of the production area, a ceiling on yield per hectare, and quality control measures. With regard to these *quality wines produced in specified regions (psr)*, the Community system relates quality to the idea of specific origin. Nevertheless, Community legislation on table wines has created another category, namely *local wines* which, being also linked to provenance, may be likened to a designation of origin. Like quality wines, local wines must meet two requirements, in that they must have a specific origin and comply with certain rules governing production, established by Member States. Both may be deemed to be designations of origin. A third category may be assimilated to a geographical indication, namely *table wines with a geographical name* (not a specific region)⁶⁷. The last case in hand is that of *traditional names*: these are wines that are treated as quality wines psr although their name does not refer to a specific region (e.g. Muscadet).

93. There is a wealth of Community legislation on wine. The list below is accordingly confined to a brief description of the major regulations governing the protection of geographical names. It should be borne in mind that this legislation prohibits the use of a protected geographical designation for products lacking the provenance specified.

65. Hangard Daniel, “Protection of Trademarks and Geographical Indications in France and the European Union”, in “WIPO, Symposium on Geographical Indications, Melbourne, Australia, 5-6 April 1995. Article 4: “A Community trademark may consist of any signs capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings”.

66. Council Regulation (EEC) No 822/87 of 16 March 1987, Article 1.

67. See Heine, J. “Protection of geographical indications in the European Community”, WIPO, Third International Symposium on the International Protection of Geographical Indications, Wiesbaden (Germany) 17-18 October 1991.

94. Council Regulation (EEC) No 823/87 of 16 March 1987 laying down special provisions relating to quality wines produced in specified regions. Quality wines produced in specified regions (quality wines psr) must meet two requirements, in that they must come from a demarcated area of production and comply with certain rules governing their production. While the Regulation lays down a number of general rules⁶⁸, Member States are free to determine other conditions of production and inspection, and to recognise the names of wines produced on their soil. The use of the Community term “quality wine psr” is optional for Member States, which may designate their quality wines using this term or specific terms traditionally used in the country concerned (Art. 15-2). Generally Article 15-5 stipulates that “may be used for the description and presentation of a beverage other than a wine or grape must only if there is no risk of confusion as to the nature, origin or source and composition of such beverage: the name of a specified region”. Following this Regulation, a list of quality wines psr was published in the Official Journal of the European Communities⁶⁹.

95. Council Regulation (EEC) No 1576/89 laying down general rules on the definition, description and presentation of spirit drinks. This provides for the use of geographical designations “for spirit drinks in the case of which the production stage during which they acquired their character and definitive qualities took place in the geographical area indicated”. In that event, geographical designations may replace or supplement generic designations (Art. 5). Article 1 lists a number of designations protected at Community level.

96. *Council Regulation (EEC) No 2392/89 laying down general rules for the description and presentation of wines and grape musts.* Under Article 40: “The description and presentation of the products referred to in this Regulation, and any form of advertising for such products, must not be incorrect or likely to cause confusion or mislead the persons to whom they are addressed (...). This shall apply even if the information is used in translation or with a reference to the actual provenance or with additions such as ‘type’, ‘style’, ‘method’, ‘imitation’, ‘brand’ or similar.” Protection covers the characteristics of the products, in particular their nature, composition, (...) origin or provenance.

97. Article 40-3 of this Regulation has been amended to protect brand names that have been registered for a long time and may correspond to a producer’s surname. In this case, even when the name is registered as a geographical indication, the trade mark may still be used provided that registration took place at least 25 years before the official registration of the geographical name concerned.

98. Following this regulation, a list of table wines with geographical designations was published in the Official Journal of the European Communities⁷⁰.

99. *Council Regulation (EEC) No 1601/91 on aromatized wines.* Article 6 of this Regulation provides for the use of geographical designations for aromatized wines.

68. The Community requires that traditional conditions of production be taken into account. It also imposes specifications regarding demarcation of the area of production, vine varieties, cultivation methods, wine-making methods, minimum natural alcoholic strength by volume, yield per hectare, analysis and assessment of organoleptic characteristics.

69. No 96/C 344/07, OJ No 46, 19 February 1999.

70. No. 96/C 344/08, OJ No 46, 19 February 1999.

Spain

History and legal basis

100. With regard to the protection of geographical indications, Spain has special legislation for designations of origin but the Trademark Act also affords indirect protection.

101. The Spanish regime for protecting and certifying the origin of agricultural and agri-food products was first established for wines and spirits. It is based on *Law No. 25 of 2 December 1970 on Vineyard, Wine and Alcohol Regulations (Estatuto de la Viña, del Vino y de los Alcooles)*, and updates the first law on designations of origin for wine, dating back to 1933. This actually created designations of origin (*Denominación de origen*) for wines and provided for them to be extended to other agricultural products which, for reasons pertaining to their quality, were considered of special economic and social interest (Disposición Adicional 5a). It also set up the *Instituto Nacional de Denominaciones de Origen*, or INDO, to regulate and monitor designations, and a Regulatory Authority for each designation. Numerous ministerial decrees have extended the law to other groups of products, including olive oil, raw ham and cheese (1975), beans, lentils and rice (1982), peppers (1986) and fresh meat (1987). Article 79 of this law gives the following definition of *Denominación de origen*: “Geographical name of a region, district, place or locality used to designate a product derived by grapes, wines and spirits originating in that area and having distinctive qualities and characteristics due mainly to the natural environment and to its preparation and cultivation”.

102. Royal Decree (*Real Decreto*) No. 1573 of 1 August 1985 establishes and regulates special designations (*Denominación específica*) and generic designations (*Denominación genérica*) for wines⁷¹.

103. Royal Decree No. 157/1988 establishes general rules for *denominaciones de origen* and *denominaciones calificadas*.

104. Royal Decree No. 728 of 8 July 1988 lays down standards on three types of designation for products other than wine: *Denominación de origen*; *Denominación específica*; *Denominación genérica* (see footnote 80).

105. Ministerial Order of 25 January 1994 establishes a direct correspondence between Spanish designations and the type of designation introduced by EU Council Regulation (EEC) No 2081/92.

106. More generally, the Trademark Act (Law No. 32/88) states that signs that may mislead consumers as to the true origin of a product may not be registered as trademarks.

107. Royal Decree No. 1643 of 22 October 1999 establishes the application procedure for registration in the Community Register of protected designations of origin and protected geographical indications. It also sets out details on the presentation of applications, the documentary proof required and the relevant administrative body.

Institutions involved

108. Under Law No. 25/1970, the *Instituto Nacional de Denominaciones de Origen* (INDO) was an independent public institution reporting to the Ministry of Agriculture. Its role was to inspect, promote and

71. *Denominación generica* has been abolished accordingly to the evolution of national and european legislation.

defend designations of origin. Regulatory Authorities (*Consejo Regulador*) were decentralised bodies reporting to INDO, which delegated to them the inspection, promotion and defence of products at local level; some of their members were appointed by government. INDO was run by a central committee that included representatives of government and trade associations (producers and processors). Its chairman and director were appointed by the Ministry of Agriculture.

109. When the new constitution was introduced in 1978, Spain opted for decentralisation. The 17 Autonomous Communities (regions) are now in charge of their own designations of origin, and INDO's role is confined to co-ordinating and protecting Spanish designations at international level. INDO is no longer an independent institution, but a sub-division of the Directorate-General for Food Policy. Each Autonomous Community has its own department for designations of origin. INDO has the same powers as an Autonomous Community when a designation involves more than one Community, in which case the Regulatory Authority reports to the Directorate-General for Food Policy (INDO).

110. Under Royal Decree No. 1890 of 2 August 1996 and Royal Decree No. 693/200 on the basic structure of the Ministry of Agriculture, INDO's responsibilities were transferred to the *Subdirección General de Denominaciones de Calidad y de Relaciones interprofesionales y contractuales*". It has retained the same mandate, and is still the government authority that forwards to the European Community Spanish applications to register designations of origin and geographical indications.

111. The *Regulatory Authorities* are the bodies that inspect, protect and promote designations of origin. They are joint bodies whose members are drawn from both production and processing and are elected democratically every four years.

112. The Ministry of Agriculture is responsible for providing national and international protection for designations. It is either the Ministry or Governments of Autonomous Communities which are responsible for enforcing penalties, depending on their respective competencies.

Definitions and characteristics

Agri-food products other than wine (Royal Decree No. 728 of 8 July 1988)

113. *Denominación de origen*: The product must draw its distinctive qualities and characteristics from the geographical environment of production, the raw materials used and the method of production.

114. *Denominación específica*: The product must draw its characteristics from its natural environment, raw material base or methods of preparation.

115. *Denominación genérica*: applies to groups of products with no precise area of origin but with common characteristics relating either to the system of production (e.g. organic farming) or to the method of production.

116. Correspondence with the definitions laid down by Council Regulation (EEC) No. 2081/92:

Denominación de origen: protected designation of origin

Denominación específica: protected geographical indication.

Wine

117. *Denominación de origen*: The product must draw its distinctive qualities and characteristics from the geographical environment of production, the raw materials used and the method of production:

- Article 79 of this law gives the following definition of *Denominación de origen*: “Geographical name of a region, district, place or locality used to designate a product derived by grapes, wines and spirits originating in that area and having distinctive qualities and characteristics due mainly to the natural environment and to its preparation and cultivation” (Article 79, Law 25/1970).
- *Vino de la tierra*: term applicable to table wines from certain wine-growing areas, by whose name it must be accompanied. These wines must satisfy certain conditions with respect to varieties, alcoholic strength and acidity (Article 3, Order of 11 December 1986).

118. Spain has also adopted the EU definition of quality wines produced in specified regions (see section on the European Union).

Registration

Agri-food products other than wine

119. Products already protected in the Member State are subject to the simplified registration procedure set out in Article 17 of Regulation (EC) No. 2081/92. Others must follow the procedure set out in Articles 5, 6 and 7 of the same regulation, which has been transposed into Spanish law as Royal Decree No. 1643 of 22 October 1999 (see above).

Wines

120. Regarding registration of designations of origin for wines, see paragraph 95 concerning the European Union.

Product specification

Wines

121. Minimum criteria are defined for “quality wines produced in specified regions” [Article 2 of Regulation (EEC) No 823/87, see section on the European Union]. Interested groups of producers or individuals must submit an application containing the required information

Agri-food products other than wine

122. Minimum criteria are set out in Regulation (EEC) 2081/92 (see section on the European Union). Producer groups submit an application for approval to the national authorities, and subsequently to the EU.

Inspection

123. Any products with a registered designation of origin or geographical indication must comply not only with the relevant horizontal standards but also with product specifications. Products are therefore subject to dual control. The regulatory authorities monitor compliance with the specifications. Each

regulatory authority has its own inspection service which, as required under Article 10 of Regulation (EEC) No. 2081/92, must meet the requirements laid down in European standard EN 45011⁷².

Wines and Spirits

124. *Denominación de origen*, established by Law No. 25 of 2 December 1970 on Vineyard, Wine and Alcohol Regulations (*Estatuto de la Viña, del Vino y de los Alcooles*).

125. Geographical indications, under Regulation (EC) 2392/89. Order of 11 December 1986, laying down standards for the use of geographical indications and the term *Vinos de la tierra* for local table wines.

126. Geographical indications such as *Vinos de la tierra* are initially approved by the relevant Autonomous Community. They are then recognised at EU level under Article 1.3 of Regulation (EEC) 823/87.

72. European standard laying down the general criteria for product certification bodies.

France

History and legal basis (*foodstuffs, including wine*)

127. In France, geographical indications are protected by special regulations relating to appellations of origin, wines, and consumer protection. The first special legislation on appellations of origin dates back to the 14th century (Roquefort cheese).

128. *Law of 1 August 1905*. This made government responsible for the administrative recognition of appellations of origin, i.e. determining the boundaries within which a product is entitled to a particular name. Fines were imposed on “anyone who misled or attempted to mislead the contracting party ... as to the origin ... of any product”. A number of decrees then followed on the definition of production area boundaries and the recognition of names such as Cognac, Bordeaux and Armagnac.

129. *Law of 6 May 1919 on appellations of origin*. The government then turned to the judiciary to protect producers. This law gave judges genuine powers to regulate the use of names. It established appellation of origin as a collective property right. At the same time it enabled producers to register an appellation simply by declaring it as such. Under Article 10 a generic appellation could not fall into the public domain, or be deemed generic in nature. This legislation had its limits in that, while judges did not find it too hard to define boundaries, they were not competent to specify other production criteria for an appellation. All kinds of area could be, and were, declared to be appellations, the outcome being a host of appellations of origin throughout the wine industry.

130. Roquefort Protection Act of 1925.

131. The *Law of 26 May 1930*, the benchmark for indications of provenance, sets out penalties for false indications of origin.

132. *Decree-Law of 30 July 1935 on controlled appellations of origin for wines*. This established a special category of controlled appellations of origin (AOC) for wines and spirits, and set up an institution to specify production requirements, the National Committee for Wines and Spirits. In 1947 this became the National Institute of Appellations of Origin for Wines and Spirits (INAO). From that time onwards, the responsibility for AOC recognition was conferred, under the supervision of the state, to professionals who were members of the Institute.

133. Law of 1936 on the protection of Bresse poultry.

134. *Law of 28 November 1955*. This established a system of protection for cheese similar to the one for wine, defining the registration requirements for AOC cheeses. Following approval by the National Committee for Appellations of Origin for Cheeses, new appellations of origin were recognised in decrees issued by the Ministry of Agriculture.

135. Laws for the protection of Comté and Cantal cheese (1956).

136. *Law No. 66-482 of 6 July 1966*, amending the Law of 6 May 1919, established a new procedure for registering appellations of origin, via a decree issued by the *Conseil d'État*, but it did not cover certain products which, like wine and cheese, had been awarded special status. The concept of appellation of origin was defined for the first time.

137. *Law of 2 December 1973*. Article 44 prohibits misleading and unfair advertising, particularly in respect of the origin of goods.

138. *Law of 2 July 1990.* This contained special provisions covering “*appellation d’origine contrôlée*” (AOC). To avoid any ambiguity, it introduced the notion of “*controlled appellation of origin*” in the agri-food sector, replacing the earlier concept of “*appellation of origin*”, registrable via the declaration procedure under the Law of 6 May 1919. As from 1 July 1995, any appellation of origin would be an AOC, with the exception of quality wines and appellations of origin from France’s overseas *départements*, which retained their previous status. Products whose appellations of origin were defined by the courts prior to 1 July 1990, and spirits with appellations of origin acquired under the declaration procedure, were given five years in which to apply to the National Institute of Appellations of Origin (INAO) for registration as AOCs. On the date of promulgation, however, those products (wines, cheeses, etc.) whose origins had previously been defined via legislation or regulations automatically acquired an AOC. The law thus established a system based on a precise definition of “*controlled appellation of origin*”. This definition standardised the recognition procedures for all agricultural products and foodstuffs by laying down basic requirements for the acquisition of an AOC.

139. *Decree No. 911-368 of 15 April 1991*, issued by the Ministry of Agriculture and Forestry, on the organisation and operation of the National Institute of Appellations of Origin⁷³. Matters relating to appellations of origin were decentralised to a certain degree.

140. *Law No. 92-597 of 1 July 1992, on the Intellectual Property Code.* Section VII concerns Trademarks, Service Marks and Other Distinctive Signs. French law allows a geographical name to be registered as a trademark (L 71 --1), provided that the geographical indication is a distinctive feature of the product (not a generic name), and that it is not liable to mislead the public. A geographical indication may not be registered as a collective mark. A geographical name that does not have a special reputation with regard to the specific product concerned may be considered a valid trademark; it is, thus, an arbitrary definition, and may not infringe on earlier rights, particularly on those of a protected appellation of origin.

141. *Law of 26 July 1993 on the Consumer Code.* Under Article L115-5 a 4 of the Consumer Code, “the geographical name constituting the appellation of origin or any term evoking it may not be used for any similar product (...) or for any other product or service where such use might lead to the misappropriation or lessening of the reputation of the appellation of origin”. It is a punishable offence to use any indication suggesting that a product comes from a specific locality in France or abroad when this is not the case (Art. L 217.6).

142. *Law No. 94.2 of 3 January 1994 on the recognition of the quality of agricultural products and foodstuffs.* It is through this legislation that France has incorporated the changes stemming from European regulations. The EU registration system for protected designations of origin (PDOs) supplements the French system of approval by decree.

143. *Law No. 98-565 of 8 July 1998 on the legislative section of Volume VI (new) of the Rural Code*, Official Journal of 9 July 1998: Section 3 on the National Institute of Appellations of Origin; Section 4 on the protection of areas covered by appellations of origin; Section 5 containing special arrangements for the wine and spirits industry.

144. *Agricultural Outline Law No. 99-574 of 9 July 1999.* This amends and supplements the legislative section of Volume VI (new) of the Rural Code. In particular, it gives the INAO the authority to recognise a protected geographical indication (PGI), on the advice of the National Commission for Agricultural and Food Product Labels and Certificates (CNLC).

73. Amended by D. 93 875 of 25 June 1993.

Institutions involved

145. *INAO (Institut national des appellations d'origine)* was established in 1935 to recognise the names of wines and spirits, codify their use and protect them from unauthorised use in France and abroad. Its authority was then broadened to cover all agro-food products bearing the AOC mark. From the outset, the Institute's mandate has been to submit proposals to government regarding the recognition of appellations of origin by drawing up the necessary regulations, and to inspect and protect them at the national and international levels. It has legal personality and the capacity to be a party to legal proceedings.

146. Three National Committees: the National Committee for Wines and Spirits, the National Committee for Dairy Products and the National Committee for Agro-Food Products. Their members include government-appointed representatives from the relevant sectors, government representatives, national experts, qualified members in trade and distribution, and representatives of consumer groups. They discuss the recognition of AOCs and validate each stage of the registration procedure. A standing Council with 22 members from all three Committees discusses the Institute's general policy and ensures that its work is consistent.

147. *Regional Committees.* Their members are government representatives and professionals. They issue opinions on applications for the recognition of products from their own regions.

148. *Appellation associations.* Their members are regional partners from the sector concerned and, with INAO, they prepare applications for registration. Every appellation has its own association.

Definitions

149. *Appellation d'origine:* "the name of a country, region or locality used to designate a product originating therein and whose quality or characteristics are due to the geographical environment including its natural and human factors" (Consumer Code, Article L115.1).

150. *Appellation d'origine contrôlée:* "an appellation of origin in the agricultural products and foodstuffs sector, with a duly established reputation and an approval procedure defined by a decree passed on an INAO proposal setting out the relevant boundaries and requirements pertaining to production and approval" (Consumer Code, Articles L. 115.5 and L. 115.6).

Product specifications

151. Drawing up product specifications for any appellation (boundaries⁷⁴, animal and plant species, production methods) requires not only a deep knowledge of the area but also determination on the part of producers and the whole industry, who need to join forces and define the requirements for an appellation to be recognised as such. The product specifications set out in the application for registration are the basic requirements for an AOC (description of the product, link with the area, geographical boundaries; specific production requirements; history of the product and duly established reputation; approvals procedure; collective local initiative).

152. Following a proposal by the INAO, the product specifications are codified in a decree.

Registration/inspection

74. The boundaries of the relevant area are drawn up by government, in close collaboration with producers.

153. The procedure used to register an AOC, or to amend an existing appellation, always involves the National Institute of Appellations of Origin (INAO), operating in liaison with the association for the appellation concerned.

154. The regional partners in the sector concerned must form a *syndicat de défense* (appellation association). In consultation with INAO, the association prepares an application setting out the grounds for requesting a new AOC; evidence of a reputation; evidence of the link between the product and the natural, technical and social conditions that give the product its typical characteristics; and an economic and financial assessment. The application is forwarded to INAO's Regional Committee (if one exists) for its opinion and then on to INAO's National Committee. INAO has the authority to appoint an Investigation Board (*Commission d'enquête*), comprising National Committee members who are professionals but in areas other than the applicant's. To define area boundaries, the Investigation Board hears experts from the sector concerned. It then makes known its decision regarding the registration of the AOC and, in conjunction with -- but not necessarily in agreement with -- the appellation association, draws up production requirements, proposed boundaries and an approvals procedure if none exists. The National Committee takes the final decision.

155. An investigation is carried out once the application has been filed with the National Committee and while the application is being reviewed. In the case of AOCs, the investigation is regional and seeks to identify any internal objections either to the area's boundaries or to the related name and production specifications. A national investigation may be carried out to identify possible users of the name of the future AOC outside the area in question.

156. In the case of Protected Geographical Indications (PGIs), the investigation is on a national scale. It seeks to achieve the same broad aims but is also concerned with identifying any opponents outside the area, requesting an extension of the territory to include them, or arguing that the product and its name are generic.

157. INAO's National Committee gives its approval and draws up the official version of the decree. This is eventually published in France's *Official Journal*, signed jointly by the Ministry of Agriculture and the Ministry of Finance. The file is then forwarded by the Ministry of Agriculture to the European Union authorities in Brussels. For AOCs the procedure can take from three to ten years, and for PGIs from two to three years.

158. INAO is responsible for inspections and analytical/organoleptic tests for AOC products as required under the 1994 Act and European regulations. PGI products are recognised by INAO, which retains broad responsibility for inspections although, in practice, these are conducted by the certifying institutions.

Wines

159. After developing its own concept of AOC wines (see section on legislation), France has since 1970 been implementing EU regulations on quality wines produced in specified regions ("quality wines psr") and protected designations of origin.

160. Regulation (EEC) No 823/87 and all other EU regulations on wines and spirits apply in France.

Italy

History and legal basis

161. It should be noted that Italian legislation on products with protected designations of origin and typical designations is based on both horizontal and product-specific rules. In 1951 Italy was a party to the International Convention on the Use of Designations of Origin and Names for Cheeses (Stresa Convention), implemented in Presidential Decree No. 1099 of 18 November 1953. In 1954 Law No. 125 established the legal basis for awarding and protecting designations of origin or typical designations for cheeses. In 1992 Law No. 169 on the protection of designated origin for olive oil regulated that industry as the previous law had protected the cheese industry. Following the adoption of Regulations (EEC) Nos. 2081 and 2082 in 1992, a set of laws was passed to adapt Italian legislation to the Community system. Of the laws that preceded the EU regulations, the only sections to remain in force were those compatible with the regulations.

Laws prior to Regulations (EEC) Nos. 2081 and 2082 (1992)

162. *Law No. 125 of 1954* on designations of origin and typical designations for cheeses established a National Committee for Designations of Origin and Typical Designations for Cheeses, reporting to the Ministry of Agriculture. This law makes product consortia (producer groups) responsible for production and marketing controls on products with designations of origin or typical designations.

163. Further decrees and laws relate to other products. They include *Interministerial Decree of 23 March 1957*, recognising the Grana Padano Cheese Consortium as responsible for the production of Grana Padano cheese, *Interministerial Decree of 17 June 1957* recognising the Parmigiano Reggiano Cheese Consortium as responsible for the production of Parmigiano Reggiano cheese, *Ministerial Decree of 3 July 1978* recognising the Parma Consortium as responsible for the production of Parma ham (on the basis of Law 506 of 4 July 1979). Processed meat, and fruit and vegetables, are not governed by a single outline act.

164. *Interministerial Decree of 14 December 1981* regulates the supervisory role of consortia in the production of controlled designation cheeses. It stipulates that the supervisory consortia must provide producer organisations with output plans based on sales forecasts. They can set a ceiling on output if there is disequilibrium in their reference market.

165. *Law No. 169 of 5 February 1992* on the protection of origin for olive oil.

Laws following the introduction of Community regulations

166. Ministerial Decree of 3 November 1995 established the Ispettorato Centrale Repressioni Frodi (central inspectorate for the repression of fraud, or ICRF) as the central inspection body.

167. *Ministerial Decree of 18 December 1997* gave the Ministry of Agricultural Policy the role of coordinating inspection at national level.

168. Article 53 of *Law No. 128 of 24 April 1998* implements the aspects of Regulation (EEC) 2081/92 that relate to inspection structures, stipulating that these should be managed by an independent body.

169. Article 14 of *Law No. 526 of 21 December 1999* (Italy -- the Community law for 1999) redefines the role and limits of a product consortium.

Institutions involved

170. In 1954, Law No. 125 established a *National Committee for Designations of Origin and Typical Designations for Cheeses*. Law No. 169 of 1992 established a similar *Committee for Plant Oils*. Both committees are still called upon to give an opinion on the approval of product specifications before an application for European registration is made.

171. The *Producer Consortia* draw up applications for the registration of Protected Designations of Origin (PDOs). They also play a role in monitoring, supervising and promoting each controlled designation product, a role that is defined in Section 14 of Law No. 526 of 21 December 1999 (Italy -- the Community law for 1999).

172. *Independent bodies* are responsible for inspection, and are approved by the Ministry of Agricultural Policy.

173. The *Ispettorato Centrale Repressioni Frodi* and local authorities are in charge of supervising the inspection work carried out by the external bodies.

174. The *Ministry of Agricultural Policy* is the national authority responsible for registration.

Definitions

Law No. 125 of 1954 on the supervision of designations of origin and typical designations for cheeses

175. *Denominazioni d'Origine* (designations of origin) are “designations applying to cheeses produced in specified geographical areas, complying with local, fair and established usage and deriving their characteristics mainly from the production environment”.

176. *Denominazioni Tipiche* (typical designations) are “designations applying to cheeses produced on national territory, complying with fair and established usage and deriving their characteristics from specific production methods”.

177. For wines, Italy has adopted the definition as set out in EU regulations (see section on the European Union).

178. For agricultural products and foodstuffs, Italy has adopted the definitions of protected designations of origin (PDOs) and protected geographical indications (PGIs) set out in Regulation (EEC) 2081/92 (see section on the European Union).

179. For *geographical indications*, Italy recognises the definition contained in the TRIPS Agreement.

Registration

180. The initiative to apply for the registration of a geographical designation may be taken by entities that are public (regions) or private (product consortiums, or an association of producer groups). Decisions on registration are taken by the Ministry of Agricultural Policy, working in conjunction with the relevant National Committees for Designations of Origin.

Product specifications

181. Product specifications comply with the standards introduced in 1992 by Regulations (EEC) 2081 and 2082 on the protection of geographical indications, designations of origin and certificates of specific

character (see section on the European Union). Product specifications contain the rules governing all stages of the production process, quality standards, packaging and marketing. They must provide for inspection and certification to be carried out by an independent body.

Inspection

182. Italy is progressively implementing European regulations. Article 53 of Law No.128/98 provides for the inspection of PDO and PGI products to be carried out by an independent body⁷⁵. For every registered product there must be an inspection body, public or private, formally authorised by the Ministry of Agricultural Policy. The *Ispettorato Centrale Repressioni Frodi* and the relevant *local authorities* oversee the inspection work conducted by these independent bodies. Section 14 of *Law No. 526 of 21 December 1999* (Italy -- the Community law for 1999) clarifies this area. The Ministry of Agricultural Policy remains the national authority in charge of co-ordinating inspection activities. Inspection is carried out by a formally appointed public body or a private body authorised by ministerial decree. Each body may be in charge of inspecting one or more products of designated origin.

183. Italy also applies quality assurance standards such as ISO 9000 to cheese products with a designation of origin.

Wines

184. *Law No. 164 of 10 February 1992 on new rules governing designations of origin for wines* transposes European Regulation (EEC) 823/87 into Italian law and replaces the earlier Law No. 930 of 1963. The new law divides Italian wine into three categories:

Typical geographical indication (IGT)

Controlled designation of origin (DOC)

Controlled and guaranteed designation of origin (DOCG).

185. In Italian law “designation of origin” means any geographical name of a viticultural area producing a product of quality and renown, belonging to a number of producers. The geographical name that comes after the letters DOC or DOCG may be followed by the name of the vine variety or other terms. DOCG status is awarded to DOC wines at least five years of age, of high quality and of national and international repute. *Typical geographical indications* are represented by a geographical name used for table wines and corresponding to a usually very extensive viticultural area that may be specified by vine variety, type of wine or colour. IGTs are not allowed to use the names of areas used by DOCs and DOCGs. In ascending order, Italian wines are classed as IGT, DOC or DOCG.

186. *Ministerial Decree No. 28 of 1993* on the rules for physical, chemical and organoleptic tests for wines of designated origin and on the work of the Wine-Tasting Board.

187. *Presidential Decree No. 335 of 1994* on the administrative procedures for recognising designations of origin and amending product specifications.

188. *Ministerial Decree No. 256 of 1997* on the activity of the product consortia supervising wines of designated origin.

75. Prior to the adoption of EU Regulation 2091/92, inspection was conducted by the consortia.

United Kingdom

Legal basis

189. Common law action for passing off.

Trade Descriptions Act 1968.

Trade Marks Act 1994.

Scotch Whisky Act 1988 and Scotch Whisky Order 1990.

Protection for wines organised by Regulation (EEC) 823/87.

Protection for spirits organised by Regulation (EEC) 1576/98.

Protection of geographical indications and designations of origin for products other than viticultural products by Regulation (EEC) 2081/92.

190. In the United Kingdom there is no special legislation on the protection of geographical indications (apart from the implementation of the EEC Regulation on designations of origin), but such names benefit from a degree of legal protection under the Trade Descriptions Act, the common law action for passing off and the Trade Marks Act.

191. *Consumer law - Trade Descriptions Act*: any person who, in the course of trade, applies a false trade description to goods so marked, is guilty of an offence. "Trade description" includes any indication, direct or indirect, of the place of production or of the identity of the producer, or of the "other history" of the goods. It is an offence to provide any information which, while not a trade description, is likely to be deemed to be one if that information is false. Similarly, a trade description which, though not literally false, is likely to mislead is deemed to be a false trade description. This means that a person cannot hide behind claims that a particular geographical or other indication was intended to be purely descriptive and not to be taken literally. If the public is likely to be misled, an offence has been committed. Each case must be examined individually; a geographical name applied to goods may or may not be deemed to indicate origin, depending on consumer expectations. In July 1999, the government published a consumer strategy: *Modern markets - confident consumers*. Its main aim is to provide a better deal for consumers. UK consumer protection law (including the *Trade Descriptions Act*) will be updated as part of this strategy.

192. *Passing-off* is a term used in common law countries. It occurs when one trader presents goods or services in a way which is likely to injure the business, reputation or goodwill of another trader. The plaintiff must show that the way his goods or services are presented by the defendant is likely to cause confusion and that he is likely to be injured by the confusion. Injury is a necessary and sufficient condition in an action for passing off, as is misrepresentation and confusion in the minds of consumers. Action for passing off has no statutory basis. It was created by the courts during the early part of the 19th century, when the imitation of a competitor's marks was becoming increasingly common practice.

193. *Trade Marks Act* [the Trade Marks Act 1994 replaced the Trade Mark Act 1938 and implemented the Trade Mark Directive (89/104/EEC)]. This makes provision for the registration of geographical indicators if they have acquired a distinctive character. There is also provision for the registration of geographical indications as certification or collective marks.

194. It defines a certification mark as "a mark indicating that the goods or services in connection with which it is used are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics" (Part 1, Section 50). An applicant for registration of a certification mark must file regulations governing the use of the mark. What is certified may be material, mode of manufacture, quality, or geographical origin. The regulations have to be examined by the Trade Marks Registry before the mark can be registered.

Registration gives the proprietor exclusive rights in the use of the mark. The proprietor of a mark must not trade in the goods and must be competent to certify that the goods comply with the regulations. A certification mark is protected against infringement by trade mark law. Foreign geographical indications are afforded the same protection as national ones. Whereas legal action under the Consumer Protection Act or a civil action for passing off are used to oppose the infringement of a geographical indication of origin once that infringement has occurred, registering a certification mark is a means of protecting an indication of geographical origin prior to, and independently of, infringement.

195. A geographical indication may also be registered as a collective mark, which is defined as a “mark distinguishing the goods or services of members of an association which is the proprietor of the mark from those of other undertakings” (Part 1, Section 49/1). Collective marks differ from certification marks in that the proprietor can also use the mark. A collective mark is intended to indicate a trade connection between goods or services and the association owning the mark. The proprietor may then authorise its use by other undertakings meeting the criteria listed in the regulations.

Institutions involved

196. Since the adoption of Regulation (EC) 2081/92 the United Kingdom has for the first time had to provide itself with specific legislation on Protected Designations of Origin and Protected Geographical Indications. The country did not have a tradition of “typical products” and the majority of its agricultural products are generic products. To date 31 products have been registered.

197. The *Ministry of Agriculture*, and in particular its Marketing, Competition and Consumers Division, is the competent authority for handling applications for registration. This division checks the applications submitted by producer groups to ensure they meet the criteria laid down in the EU legislation and, when content, forwards the application to the European Commission. Once a UK product or a product from another European country is published in the Official Journal, the division provides for the consultation of specialist bodies depending on the sector concerned (*Meat and Livestock Commission, British Poultry Meat Federation, Dairy Industry Federation*). In addition, the *UK Trade Marks Registry* checks that the new name to be registered is not already registered as a trade mark; it is in fact published in the *UK Trade Marks Journal*. Once the opposition procedure is concluded (see section on the European Union) the Ministry of Agriculture ensures that registered products are inspected and conform to the registered specifications. The *Trading Standards Offices*, which are controlled and financed by local government, are responsible for monitoring that registered names are respected. They also monitor the appropriate use of such names. Generally speaking, they can start proceedings in the event of the deceptive use of a geographical indication.

Registration and inspection

198. With regard to registration, producer groups must submit applications to the Ministry of Agriculture (see above).

199. With regard to inspection, any group aiming to produce a PDO or PGI must contact an *inspection body*. This must certify that the procedures for the production, processing and preparation of a product meets the specifications. The applicants nominate the inspection body. This may be a public body (in some cases the Trading Standards Office) or a private one. Under Article 10 of Regulation (EEC) 2081/92,

private inspection bodies must fulfil the requirements laid down in European Standard EN 45011. In the UK, accreditation is granted by UKAS (United Kingdom Accreditation Service)⁷⁶.

Wines and spirits

200. The *Scotch Whisky Act 1988* and the *Scotch Whisky Order 1990*. There are no geographical restrictions or precise rules on designations, but there is a specification giving the minimum production criteria to be complied with for a whisky to be called Scotch whisky.

201. The United Kingdom has also adopted the Community legislation on wines and spirits (see section on the European Union).

76. For products of controlled origin there are two main certification bodies which have been accredited by the UKAS: the *Product Authentication Inspectorate* and *Scottish Food Quality Certification Ltd*. These two bodies may subcontract the inspection of certain products to external bodies.

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