



United Nations
Educational, Scientific and
Cultural Organization



Man and
the Biosphere
Programme

Biosphere Reserves

TECHNICAL NOTES

3-2008

Man and nature

Making

the

relationship

last



Geographical indications, a contribution to maintaining biodiversity?

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AT THE interface between man and nature, a growing interest is being shown for origin-based products. In the context of globalisation, this can appear paradoxical, but increasing numbers of customers are being attracted. Belonging to the plant or animal world, processed or not, these products are most often related to biological processes, through growing, breeding, fermenting and so forth. Their relationship with the locality is defined by the association of a history and shared know-how. Some products are based on a complex organisation involving the upkeep of a broad spectrum of biodiversity, which affects the landscape down to the microbial ecosystem and sometimes includes local varieties of vegetables or breeds of animal. Many of these products carry the name of the geographic locality they come from. This association is a clear indication of the link that exists

between the quality, the origin and the reputation gained. Some problems do however arise with this practice, since the reputation associated with a place does encourage others to usurp the name to enhance their own sales. The geographic name first became protected in France, then in Europe, then in the rest of the world.

PDO, AOC AND PGI

The European legislation is based on the Protected Designation of Origin (PDO) which corresponds to the long-established French *Appellation d'Origine Contrôlée* (AOC) and the Protected Geographical Indication (PGI) with precise specifications and a clearly determined production area outside which the use of the name is forbidden. In the case of PDOs, the quality or the characteristics are due essentially or exclusively to a particular geographical envi-



Certain cheese AOCs are particularly attentive to the way the herds are run, the importance of local breeds and the composition of the pastures.

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ronment with its inherent natural and human factors. By according a determinant position to natural factors and the way they interlock with human factors, the PDO definition becomes implicitly linked to biocultural diversity. This is not the case for PGIs where a specific quality, the reputation or other characteristics can be attributed to this geographical origin (Council regulation (EC) N° 510/2006).

Natural factors, which are not mentioned, can take a secondary place and the link to the place of origin becomes established via practices and through history.

The AOC is always the result of a subtle blend of history, natural factors, and the will to define a production procedure that is so demanding that it can only apply to an individual product. The instigator of the best thought-out geographical indications is often a well-known local character who is convincingly attached to the product he is trying to defend. In some cases, a virtuous circle can bring the local stakeholders to modify their geographical indications through revision of the specifications. On the other hand, economic reasoning that is too remote from the culture of the product can reduce the AOC to an empty shell.

Biodiversity and sustainable development tend to occupy an ever-increasing place in the preoccupations of the National Institute of Origin and of Quality (*Institut national de l'origine et de la qualité* (INAO)) which, in France, is responsible for Geographical Indications (GI). The AOC “*Poiré Domfront*” obtained in 2002 for a perry, and the AOC “*châtaigne d’Ardèche*” (chestnut from the *Ardèche département*) also made an effort to take into account the whole ecosystem. Certain cheese AOCs such as the *Tome des Bauges* (2003) or *Comté* – its decree was revised in 2007 – are particularly attentive to the way the herds are run, the importance of local breeds of cattle, the composition of the pastures and the natural microbial flora of the milk. The AOCs that respect the INAO doctrine the closest participate in the upkeep of the landscapes and in a certain number of cases, the conservation of



Geographical indications can be enlarged to cover handicraft products (Pottery from Mont Ventoux, France).

local resources *in situ*.

In the French agricultural law of January 5th 2006, the section concerning AOC imposes external controls by an independent certifying organisation. This new situation may lead to a standardisation that appears to be less suited to taking cultural biodiversity into account.

Indeed, for economic reasons only the characteristics that are the easiest and the least numerous to check will be taken

Cultural biodiversity counts.

into account. The significant cost of the controls could add to the financial strain on already precarious smaller AOCs. On the other hand, this reorganisation could give impetus to the collective trademark and the collective certification trademark, the two labels not requiring the regulations to be followed in the same way. For instance the denomination “*Parc naturel régional*” followed by the name of the park is a collective label for the natural parks of France registered in 1997 as the property of the Ministry of the Environment. The collective label “*Sites remarquables du gout*” (Sites of remarkable taste), registered in 2001, associates a food product, a

remarkable heritage – such as architecture or landscape – and a tourist setting.

The principle of protecting the geographical indications was adopted internationally in the framework of the TRIPS agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights). But, its application does raise many questions, considering the great diversity of situations and human cultures.

This agreement, generated by the World Trade Organisation (WTO) defines GI: “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.” The actual geographic environment, with its natural and human factors, does not appear as such but the simple act of acknowledging the existence of geographical indications, often *de facto* bearers of biodiversity, is a step in the right direction. Just like in the set of obligations laid down in the TRIPS agreement, the definition is that of a minimum standard that the members must respect – it is the member state’s responsibility to plan a

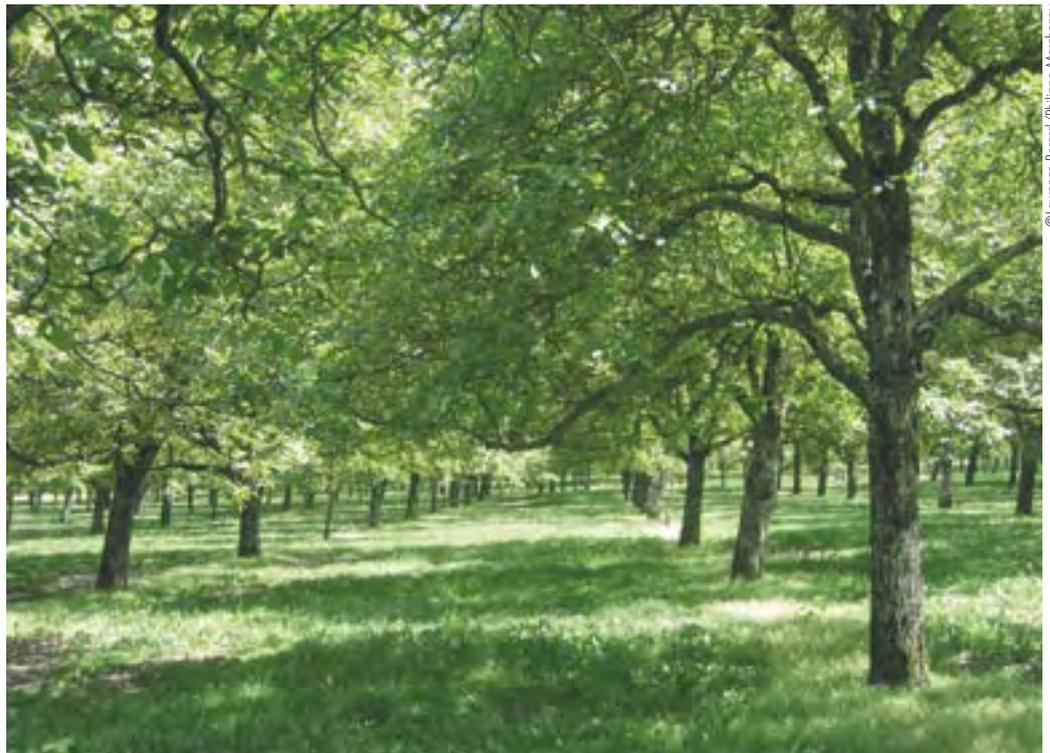
stricter GI if they wish or to enlarge the system to take in other products such as wild plants, wickerwork or pottery.

The ADPIC agreement includes a general basic protection, which concerns all products, and an “additional” protection for wines and spirits, which protects the use of names much more efficiently. Applying this higher level of protection to the whole agro-food sector always comes up against strong opposition. Many unknowns remain concerning the establishment of

*Collective trademarks
poorly suit the fight against
outsourcing.*

such legislation in developing countries considering the enormous differences there are in the levels of development. France took a hundred years to perfect its system of protection, which long remained limited to wines and spirits in a relatively calm international context. The atmosphere is quite different today. Free exchange has led to acceleration in the circulation of goods. This is the case for origin-based products from emerging countries, often valued in the rich countries which then go on to register the trade names. This happened for the emblematic name of rooibos (south African “red tea”), which was registered as a trademark by a private company in the USA in 1994. Following a legal battle

The «Grenoble walnut» is a French AOC since 1938. (Orchard, Royans, Isère, France)



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Long limited to wines and spirits, the notion of Appellation d'origine contrôlée was extended in 1990 to all agricultural and food products, both fresh and processed. (Mont Ventoux, Vaucluse, France)

won by South African state-backed operators in 2005, rooibos was recognised as a generic name, belonging to the public domain.

Developing countries should now set up, and quickly, a system to protect their GIs, to avoid being dispossessed. They can do it using the tools they already have or new tools gained through contacts or establishment of long-term relationships with industrialised nations. In these countries where the approach is new, private brand names that are collective or related to certification, have been found to be easier to use than the complex systems established in Europe and can be encouraged to set up the whole system. This is the case in South Africa for products other than wines and liquors. Three examples of highly reputed products with their own trademarks are Swakara pelts, produced by the karakul race of sheep – this is the commercial name for this astrakhan in South Africa, Botswana and Namibia – and in South Africa there is also Camdeboo mohair, from the Angora goat and Karoo lamb giving quality meat flavoured by the animal's diet of wild aromatic

plants.

A few countries have taken inspiration from the French model, others set up hybrid systems between GIs and trademarks or they innovate, like Brazil. In 1988, Brazil promulgated an ambitious new constitution; one of its aims is to protect biological and cultural diversity by institutionalising the registration of immaterial cultural goods. The geographical indications, then not used much and poorly known, were defined in a 1996 Brazilian law as being collective intellectual property rights.

THE DIFFICULTY OF SPOT-CHECKS

In France, the GIs are based on a large institutional and technical system. They are upheld by public policies on national and European levels. But, among the developing countries, how many have sufficient institutional and financial resources to do this? The same can be said for routine controls, which are complex and expensive to set up. Biodiversity considerations will involve the participation and the motivation of the people responsible for drawing up

the specifications. The specifications are the cornerstone of GIs, precisely determining their level of specificity. But again, a prerequisite for this is organisations capable of supporting the producers and setting up controls. Could collective trademarks then be a more accessible alternative? In any case, trademarks seem to be poorly suited to the fight against outsourcing.

THE DRIVING FORCE BEHIND THE APPROACH

Now, who are the applicants and what is the role of the state for a given product? In certain developing countries, it is governments that are sometimes behind requests for neo-colonial products such as coffee or cocoa, export cash crops. It can also be the middlemen: the negotiators and the wholesalers – the merchants – interested in benefiting from this type of protection for the purposes of speculation. Who – the producers or the state – is in the best position to take biodiversity into account when drawing up the specifications to be as close as possible to local characteristics? The example of Ethiopia shows that some countries are very sensitive to this issue. In Ethiopia it was the Ministry of the

Environment that directly instigated the protection of geographical indications. But, in 2005 in the same country, the Ethiopian Intellectual Property Office counselled by the *United States Agency for International Development (USAID)*, tried to register as trademarks the names of three Ethiopian regions famous for the quality of their coffee – Harar, Sidamo and Yirgacheffe. The polemic that followed, between the multinational Starbucks, defending the principle of the GI, and Ethiopia, supported by the NGO Oxfam, provides a good illustration of the current confusion on the subject attributing a certain value to origin-based products.

In Europe, it is the producers who must file the application on their own initiative, although this does not prevent battles of strength within a given sector. The cheese sector, in particular is increasingly under the power of industry. It can happen that small producers in Europe have a hard time getting their rights respected, reporting a similar experiences to those in less developed countries.

Finally, the NGOs are omnipresent and inevitable partners. They have their own objec-

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(Galmi onions, Niger)



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The case of France

The protection of geographical indications is the result of a long chain of events that ran right through the 20th century. In 1919, a law introduced the notion of designation of origin associated with collective property rights. A decree-law in 1935 created a committee which was to become the *Institut National des Appellations d'Origine* (INAO) (National Institute for Designations of Origin) in 1947 (now known, since 2006, as the *Institut national de l'origine et de la qualité*) and laid down the foundations for the *Appellations d'Origine Contrôlée* for the wine industry. The French law of July 2nd 1990 broadened the measures to the whole of the agro-food sector. In 1992 it was adopted by Europe in the regulations concerning the protection of Geographical Indications and Designations of Origin of agricultural products and foodstuffs (revised in 2006). Since then, two legal instruments ensure the protection in France: the Protected Designation of Origin (PDO) – which can be considered to replace the French *Appellation d'Origine Contrôlée* – and the Protected Geographical Indication (PGI). **L.B. AND P.M.**

tives and their own interpretation – often that of an activist – of the geographical indications, which they count on heavily for maintaining biodiversity. Article 8j of the Biological Diversity Convention takes account of local skills: “knowledge, innovation and practices of indigenous and local communities embodying traditional lifestyles...”. This acknowledgment is taking an increasingly important place in international negotiations associated with the Biological Diversity Convention.

The regulations to protect GIs were first laid out to protect the interests of the producers faced with unfair competition and legally remain focused on the protection of the name. In Europe, the system tends to become a rural planning tool and more recently a way to conserve characteristic animal races, cultivated varieties, local know-how, and ecosystem elements modelled by human activities. GIs could have an important role to play throughout the world.

Local knowledge aiding biodiversity! The temptation is great to consider GIs like protection tools integrating biological diversity, especially the management of genetic resources, essential foundations of traditional agriculture

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