

Food for thought

🌐 *European Commission proposes changes to protection of food names system following WTO ruling*

Jacqueline Maily, Brussels office of Hogan & Hartson, explores the changes to PGI, PDO and TSG's

On 23 December 2005, the European Commission adopted two proposals, one aimed at clarifying the rules in respect of registrations of agricultural products and foodstuffs protected under the specific names "protected geographical indications" (PGI) and "protected designations of origin" (PDO) and the other aimed at clarifying the rules for the registration of agricultural products or foodstuffs that qualify as "traditional specialities guaranteed" (TSG)¹. With the adoption of these

proposals, the European Commission aims to clarify and simplify the registration procedure for special products in order to render it more efficient, as well ensure compliance with relevant WTO requirements. The proposals also seek to boost the image of the labels and the use of the EU logos that apply in respect of these food products with a view to increasing consumer recognition.

Background

The EU system for protection of food names consists of two key Regulations, namely Regulation 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs² and Regulation 2082/92 on certificates of specific character for agricultural products and foodstuffs (for the TSGs)³.

The WTO dispute settlement body recently challenged the reciprocity and equivalence requirements outlined in Regulation 2081/92, and required that this Regulation be brought in line with the TRIPS Agreement on Trade-

Related Intellectual Property rights (TRIPS Agreement)⁴. The WTO Dispute Settlement Body (DSB) ruled that the European system of geographical indications must be opened to foreign producers, without the intervention of their national authorities, and that this fact must be clearly indicated in the relevant European legislation. Furthermore, the EU would need to comply with this WTO DSB panel's decision and implement the WTO ruling by the 3 April 2006.

The EU system for protection of food names

Regulation 2081/92 instituted a voluntary Community system of protection on Community territory for geographical indications and designations of origin. This voluntary system came into effect on 24 July 1993 and provides interested producers the possibility of protecting certain names through registration. The protection provided by the system involves reserving the use of these designations of origin and geographical indications for agricultural products and foodstuffs which have been produced and/or processed in the regions or places designated by these names, subject to specific conditions concerning their production, processing and preparation laid down by the producers⁵. Regulation 2082/92, as amended, concerns certificates of specific character for agricultural products and foodstuffs, and introduced a protection system for agricultural products or foodstuffs that qualify as "traditional specialities guaranteed" (TSG)⁶.

Key features of the draft Regulations

The key features of the draft Regulations, in comparison with the existing regime, appear to be:

- The definition, in the proposal on PGI and PDO, of a "single document" for

applications. This "single document" would contain all the necessary information for registration and inspection purposes which would need to be officially published prior to registration⁷.

- The use of a standardised, comprehensive document containing this information, would help ensure greater homogeneity and equal treatment for applications.
- The proposed TSG Regulation provides that only the restricted product specification would need to be transmitted to the Commission⁸.

In respect of geographic indications, existing provisions in Regulation 2081/92 on equivalence and reciprocity would be revoked. Third country operators would be allowed to submit registration applications and objections directly rather than through their governments⁹. However, for all EU protection system procedures (PGI, PDO and TSG), the European Commission saves the option for operators established in third countries and governments to transmit their applications and/or objections to the Community through the agency of the relevant third-country authorities, if they wish to do so¹⁰.

For the entire EU protection system (PGI, PDO and TSG), the reinforcement of the provisions on controls and their inclusion in the general framework established by Regulation 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules¹¹. This proposal aims to reinforce the application of the *ex officio* protection of registered names as provided for in Article 13 of Regulation 2081/92 and the protection of registered names as "traditional specialities guaranteed" as provided for in Article 17 of Regulation 2082/92.



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The broadening of the existing definition of “geographical indication” provided in Article 2(2)(b) of Regulation 2081/92 in order to meet the definition of “geographical indication” given in Article 22 of the TRIPS Agreement.

Expected timeline for the adoption of the draft Regulations

As stated, the EU must implement the WTO ruling by 3 April 2006 and therefore the adoption of at least the draft regulation on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (PGI and PDO) must occur before that date. It is, however, very likely that the two proposals will be adopted jointly. The two proposals have been transmitted to the EU Council of Member States which is expected to reach an agreement in a forthcoming Council meeting. The draft Regulations must be adopted by qualified majority after consultation of the European Parliament. The adoption of the European Parliament’s opinion, which is not legally binding, is scheduled for March 13, 2006. ☞

Notes

1 Proposal for a Council Regulation on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (COM(2005) 698 final) <http://eisnet.eis.be/own/graph/2006/en01/eure;3018;318-1.pdf> - Proposal for a Council Regulation on agricultural products and foodstuffs as traditional specialities guaranteed (COM(2005) 694 final). <http://eisnet.eis.be/own/graph/2006/en01/eure;3018;318-2.pdf>

2 Council Regulation (EEC) No 2081/92 of July 14, 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31992R2081&model=guichett

3 Council Regulation (EEC) No. 2082/92 of July 14, 1992 on certificates of specific character for agricultural products and foodstuffs. <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31992R2082:EN:HTML> This Council Regulation was amended by Commission Regulation 1848/93 which lays down detailed rules for applying Regulation 2082/92, as well as establishes the term “traditional specialities guaranteed”

4 The decision was adopted by the WTO Dispute Settlement Body (DSB) on April 20, 2005. With regard to the dispute background, the U.S. and Australia (on June 1, 1999 and April 17, 2003 respectively), lodged a complaint to the WTO against the EC (complaints WT/DS174 and WT/DS290 respectively) claiming that there was a lack of protection of trademarks and geographical indications (GIs) for agricultural products and foodstuffs in the EC. The U.S. contended that EC Regulation 2081/92 does not provide national treatment with respect to geographical indications and does not provide sufficient protection to pre-existing trademarks that are similar or identical to a geographical indication. The U.S. considered this situation to be inconsistent with the EC’s obligations under the TRIPS Agreement. On March 15, 2005, the Panel published its report which was in favor of the United States and Australia. According to the report, the EC’s GI Regulation fails to provide national treatment to other WTO Members’ right holders and products. For more information on the WTO’s dispute settlement body’s decision, please click on: http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds290_e.htm

5 “Protected Designation of Origin (PDO)”: foodstuffs and agricultural products whose names are protected under this particular designation must be produced, processed

and prepared within a particular geographical environment and must have qualities or characteristics exclusive to that area with its inherent natural and human factors.

“Protected Geographic Indication (PGI)”: Products bearing the name of a particular geographical area which are produced or processed or prepared within that area, and which have a reputation, features or certain qualities attributable to that area, can be registered under the PGI designation.

6 “Traditional Specialities Guaranteed (TSG or Certificate of Specific Character)”: This type of registration relates to the traditional character of a foodstuff or agricultural product either in terms of its composition or by means of its production, rather than with reference to its origin.

7 This information covers inter alia the actual name, a description of the product for verification, labeling and presentation purposes (including, in this respect, any packaging restrictions outside the area of origin and the justification for such restrictions), and proof of the link between the product and its geographical origin.

8 Please see Article 6 of the proposal for Council Regulation on agricultural products and foodstuffs as traditional specialities guaranteed (COM(2005) 694 final)

9 Please see footnote 4

10 Please see article 5 (9) of the proposal on Regulation on the protection of geographical indications and designations of origin for agricultural products and foodstuffs and article 7 (7) of the proposal on Regulation on agricultural products and foodstuffs as traditional specialities guaranteed

11 Regulation (EC) No 882/2004 of the European Parliament and of the Council of April 29, 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. The text of the Regulation is available at:

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32004R0882&model=guichett

About the author

Jacqueline Maily has been working in the area of European regulatory affairs since 1990. Her regulatory practice focuses on EU food and biotechnology, pharmaceutical/medical device, environmental, and trade regulation and includes the representation of clients before EU institutions in developing, supporting, opposing, or modifying legislation.



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