



**Guide for Irish Producers to EU Protected Food Schemes
PGI/PDO/TSG Designations.
DRAFT**

This Guide is divided into 3 Parts

Part 1: Key Objectives of the Schemes

Rationale and objectives for the schemes from a number of perspectives including Producers, Retailers, Exporting, Consumers, Rural economy and public Bodies. Registration categories. How other member states promote the schemes.

Part 2: The Application process

Guiding EU legislation. Description of the Schemes. How to Apply. Who can Apply. Stages involved and lead times in the process. Product specification. Inspection and enforcement. List of Irish Products registered. Assistance available.

Part 3: EU Selected Case studies

Selected case studies outlining issues and objections to producer group applications and EU judgements.

Part 1 Rationale and objectives

Overview and Rationale for the scheme

The EU PDO/PGI regulation provides EU-wide protection to names of agricultural products and foodstuffs that have a close link to their geographic region of production. Fundamentally, the regulation aims to prevent the use of copying registered names unless the products are produced in a specified territory and according to a certain production specification (or protocol).

The certification, labelling and protection of geographical indications plays an important role in enhancing product information for consumers, including the advertising of quality symbols, guarantee certificates, and labelling policies.

PDO/PGI is viewed by many producers as a very effective scheme for the protection of product names. The alternative means of protection to PDO/PGI producers is individual trademarks, certification schemes and Brand Names. The main difference between PDO/PGI and these alternatives is that more stringent conditions are attached to registration. The PDO/PGI scheme is seen as useful for conveying information on the origin and method of production to consumers and appears to be complementary to Trade Marks and Brand Names.

The protection is also open to names of products produced in third countries outside the EU, where these names are themselves protected in their own country of origin.

In order to benefit from the PDO/PGI protection, EU producers make voluntary applications to register names to their national authorities.

Key Objectives of the Schemes:

(1)Producers

The main reasons why producers take up the scheme are a mix of non-economic and economic reasons. They include affinity with the region and protection of tradition, marketing, gaining/securing market share to keep businesses viable or profitable through the protection of the use of names, or sending quality assurance signals to consumers.

There are also some indirect benefits related to building reputation through PDO/PGI schemes including independent quality certification and competitive advantage due to increased consumer attachment to the product. Adding value and improving the reputation of the producer are also reasons for taking up the scheme.

Benefits for the Supply side:

- Protection of names/exclusive use of names
- Increased producer reputation
- More value added
- Increased/retained profit contribution in a region
- Keeps business viable
- Improves price stability

Benefits for Marketing Side:

- Useful marketing tool –enhancing reputation
- Quality assurance signal
- Differentiation of product
- Traceability
- Credibility of product
- Ability to access new markets/marketing channels (UK experience shows designated products can access quality multiples such as Waitrose)

Benefits for the Demand Side:

- Higher price premium.
- Increase/secure market share.

Benefits for Consumers

- Consumer guarantee of quality and origin.
- Consumer affinity with the region.

Indirect Benefits

- Affinity of the producer with the region.
- Protection of tradition.
- Job protection.
- Helps farmers/producer groups.
- Regional development and tourism.

The PDO/PGI scheme has served to protect vulnerable and aspiring producers of protected product names, serving to successfully preserve the diversity in PDO/PGI products that are currently produced.

Disadvantages

- The scheme centres on high production costs and there may be uncertainty about the market rewards for the PDO PGI product
- In some cases companies may have to pay a significant fee to the regulatory body which could be disproportionately large for small producers.
- In other circumstances the specifications might require production practices that are not available to certain types of producers, and not particularly relevant for increasing the quality of the product.

Potential Costs:

- Increased production costs.
- Increased marketing costs.
- Strict inspections.
- Uneven quality control enforcement along the supply chain.

Marketing:

- Uncertainty of market demand or low demand.
- Missing regional roots (no credibility among consumers).
- No added value in some cases.
- Already have own B=brand name/ trademark.
- No need because strong market position already.

Indirect

- Low consumer awareness and public support.
- Long application lead times.

In terms of fostering the introduction of new products and promoting innovations in the industry the impact of the scheme has been more limited.

(2) Distribution Channels**Multiple and independent Speciality Retail Perspective**

PDO/PGI products account for a very small share of Multiple Retailers overall business and, in general, they are seen as relatively unimportant. This is especially true for large scale multiple retailers in some but not all EU countries.

For smaller, speciality/deli type shops and traders who specialise in niche products, PDOs/PGIs are more important. The most important benefit is the enhancement of reputation being associated with high quality products.

(i)Multiple Retailers

- PDO/PGI products offer good profit contribution potential.
- PDO/PGI products offer a good fit with consumers' demand for specialist products with provenance.
- PDO PGI products are often characterised by a unique Taste.
- There is a quality and prestige attached to PDO/PGI products.

(ii) Independent Speciality Retailers

- The PDO PGI scheme helps to sell specialist products outside of the area of origin or where the products are not known by consumers.
- The scheme increases the reputation of outlets and reinforces the image, brand and reputation of retailers especially if they are small.
- The scheme offers an effective way to differentiate speciality retailers from competitors.

3) Domestic V's Export Channels

In terms of the distribution channels PDO/PGI schemes tend to be more useful to processed type products marketed through long supply chains especially export markets where traceability and quality dimensions are more important for communication to downstream intermediaries. On domestic markets trust can be a substitute for the official symbol of the scheme or because they prefer the owner's commercial brand to appear on the product.

The impact of the PDO/PGI scheme on domestic and export market shares vary by individual products and it is difficult to pass an overall judgement on the effect of the PDO/PGI scheme on increasing market share. In some cases, the scheme has been very effective both on the domestic and export markets while, in other cases, it brought no significant change.

Some PDO/PGI products are produced in small quantities because of stringent specifications and are marketed in niche markets (directed to a narrow group of potential customers). Niche markets may be very profitable despite being produced in small quantities compared to the mainstream market place.

4) Consumers

Consumer awareness and understanding about the PDO/PGI schemes is low in the EU 27 states. There is confusion as to the meaning of the PDO and PGI symbols

and consumers appear to be unable to make better choices as a result due in general to a lack of information communicated around product origin of PDO/PGIs.

In comparison to other international symbols used on food products, the level of recognition of the PDO and PGI symbols is only 8% according to a recent EU consumer survey compared to 22% who recognised the *Fair Trade* symbol and 16% recognised the organic symbol. However 62% did not recognise any of the symbols (PDO, PGI, Organic, Traditional Specialty Guaranteed and *Fair Trade*). There is also significant variation in recognition across Member States.

Not surprisingly the low levels of consumer awareness about the schemes can be explained by the absence of any significant consumer advertising and marketing campaigns by Member countries to support the PDO PGI scheme.

5) Consumer Groups/ Associations

Consumer groups in some of the countries and most traders and retailers believe that the PDO/PGI scheme can provide useful information for consumers. In Belgium, Greece and Sweden, the consumer associations believe the scheme provides useful information about product origin to consumers.

The German consumer association appreciates the PDO symbol because it guarantees the origin of the product and all of its raw materials used as ingredients. The majority of traders and retailers believe that the scheme helps consumers make product choices. The exceptions are in Sweden and Denmark, where retailers believe that consumer understanding of the scheme is so low that there are no informational benefits.

Consumer associations in Belgium, Germany and Italy believe consumers may be misled about the nature of PGI products and the origin of the raw materials used to produce them.

The Italian consumer association felt that consumers can be led to believe that PDO/PGI products are produced using traditional artisan methods, when in reality many are produced using industrial methods of production.

6) Public Bodies

- In Belgium, public authorities believe the scheme has improved the image of agriculture, increased diversification, and increased added value, maintained employment in the rural areas and increased tourism in the region.
- In Italy, public authorities consider that the scheme has increased the income of farmers, increased competitiveness in local supply chains, contributed to diversification of agricultural production (in particular in remote areas), improved the reputation of the area, and increased rural employment and tourism.
- In Jersey, the States of Jersey government notes that the protection of Jersey Royal Potatoes has had substantial benefits for the islands' economy.
- In Germany, the authorities stated that the main reason that the benefits are limited is the lack of awareness of the scheme and that the registered names were already known before the introduction of the scheme.
- In Greece, public authorities reported no benefits to them as a result of the scheme.
- The Hungarian Patent Office mentioned the receipt of an application fee as a benefit.

7) Rural Economy

Impact of the scheme on regional economies is difficult to assess as the effects are mostly indirect.

- In some instances an increase in exports has resulted from the scheme, which in return has given a boost to the incomes of farmers and producers and thus strongly benefited the economy. (Tuscany in Italy is often quoted as an example).
- Significant socio-economic and environmental benefits have resulted for the Jersey rural economy with Jersey Royal Potatoes including a contribution to the cultural heritage and the natural landscape of Jersey. Production techniques are also

relatively distinct, for example the use of seaweed fertiliser and hand planting/harvesting methods.

- German producers' group of Spreewälder Gurken believe that the scheme has had a positive impact on the regional economy and on farm diversification.

8) Social and Cultural Impact

The PDO/PGI scheme can contribute to the development of the social and cultural value of rural areas in a number of ways. It can contribute indirectly by increasing the value of specialist regional products by raising the income of farmers, producers and the wider rural community. It can also create an incentive for businesses to remain in rural areas rather than migrating to urban centres.

The schemes can help create, and sustain networks of collaboration and cooperation among producers of similar products in a region. It can also contribute to the cultural heritage of a region through product specification which enshrines a "traditional" way of production. This is particularly important where the scheme has helped to preserve products which would otherwise have disappeared from the marketplace.

The PDO/PGI scheme may also contribute to the cultural value of a region by raising the profile of typical products and incorporating these as features of local tourism as well as fairs and festivals. Many PDO/PGI producers participate in local, national and international cultural and tourism events in several countries (Belgium, France, Germany, Greece, Hungary, Italy and the UK). Overall social benefits associated with the scheme are somewhat limited.

Size of the PDO/PGI sector

Regarding the contribution of PDO and PGI schemes to turnover of the agri-food sector, best estimates from countries with high numbers of PDOs/PGIs (France, Germany, Italy and Spain) suggests that the contribution of the PDO PGI products is small but not insignificant, accounting for between 1% and 5% of the turnover of the agri-food sector in these countries.

Uptake of the scheme

Italy and France have considerably more registrations than any other Member State and between them account for approx 40% of the total number of names registered for PDO /PGI's.

A second group comprising, Spain, Portugal, Greece and Germany make up the next most important group. These six countries account for almost 90% of all registrations at present.

Registration Categories

There is a clear distinction between product categories in terms of use of the PDO and PGI designations. Between 80% and 95% of the total registrations are in the following categories

- PDO's tend to include categories such as 'Cheeses', 'Oils, and fats, olive oils, other drinks, other products of animal origin and table olives.
- PGI's: 70% to 100% of registrations in the categories 'fresh meat (and offal)', 'meat-based products', 'bread', 'pastry', 'cakes', 'confectionary', 'beer' and 'fresh fish, molluscs and crustaceans'
- Fresh fruit, vegetables and cereals tend to use PDO and PGI denominations in broadly the same proportion.

European Countries Promoting the Schemes

With the exception of Hungary and Sweden, most European countries offer some degree of support for the promotion and marketing of protected products. However, there are major differences in incentives to take up the scheme across Member States which may explain the high take-up in Southern Europe.

- **In Italy:** some regions give specific incentives such as a contribution to expenses, limited to a number of years. Incentives come mostly from the implementation of the EU regulation on support for rural development. Regional

Administrations and Ministry of Agriculture help applicant groups to prepare applications.

- **In Greece:** direct incentives are limited, but may include financial assistance for marketing, promotion and assistance to producers to attend food fairs and exhibitions.
- **In the UK:** The Department for Environment, Food and Rural Affairs funds a private consultancy company ADAS to provide support during the application process in order to improve the quality of applications. The UK has been proactive in recent times in the area and has approximately 40 products registered and a further 40 in the pipeline.
- **In Scotland:** The Scottish government provide a range of hard and soft supports to encourage producers to apply through their Department of Rural Affairs and the Environment. The Scottish government has a strategic plan for the development of the sector and currently have 7 products registered.
- **In Jersey:** the administration (States of Jersey) bears the costs (application, administration etc.) of joining the PDO/PGI scheme. In addition, farmers and traders are effectively relieved of all direct costs with the exception of bearing the cost of having the PDO label printed on the packaging.
- **In France:** the INAO (*Institut National de l'Origine et de la Qualité*) provides assistance to applicant groups in the form of meetings to resolve any queries.
- **In Belgium:** producer groups receive promotional and technical support after take-up. In addition, the authorities responsible for handling applications organise regular meetings with applicant groups and stay in close contact to help assemble applications.

Part 2

The Application Process

Guiding Legislation

In 1993 EU legislation came into force which provides for a system for the protection of food names on a geographical or traditional recipe basis. Under this system a named food or drink, (separate arrangements exist for wines and spirits) registered at a European level, will be given legal protection against imitation throughout the EU.

The original regulations (Council Regulation (EC) 2081/92 and 2082/92) were replaced in March 2006 by Council Regulations (EC) 509/2006 for Traditional Speciality Guaranteed (TSG) products and Council Regulations (EC) 510/2006 for Protected Designation of Origin (PDO)/Protected Geographical Indication (PGI) products.

Most of the existing provisions have been retained in the new regulations but amendments were necessary to take account of a World Trade Organisation (WTO) Panel ruling in 2005 in order to bring elements of the EU protected food name schemes into line with WTO rules. The new regulations require that with effect from 1 May 2009, use of the logo or wording to reflect the protected status of the product must appear on the labelling.

Applying for Registration

Protecting food names is a lengthy but relatively simple process. However, there are both direct and indirect costs involved in the form of producer time and certification inspection fees, if required. The registration process usually requires a degree of collaboration among like-minded producers. Once the product is registered the specification is available to other producers who may not have been part of the original applicant group, but who can show that their product conforms fully to the registered specification. These producers are also entitled to use the registered name.

The 3 Designation Schemes

The designations and how they differ from one another?

There are three different designations under the EU Protected Food Name (PFN) scheme, these are

Protected Designation of Origin (PDO)

Products must be produced and processed and prepared in the geographical area. The quality or characteristics are essentially due to that area.

Protection of Geographical Indication (PGI)

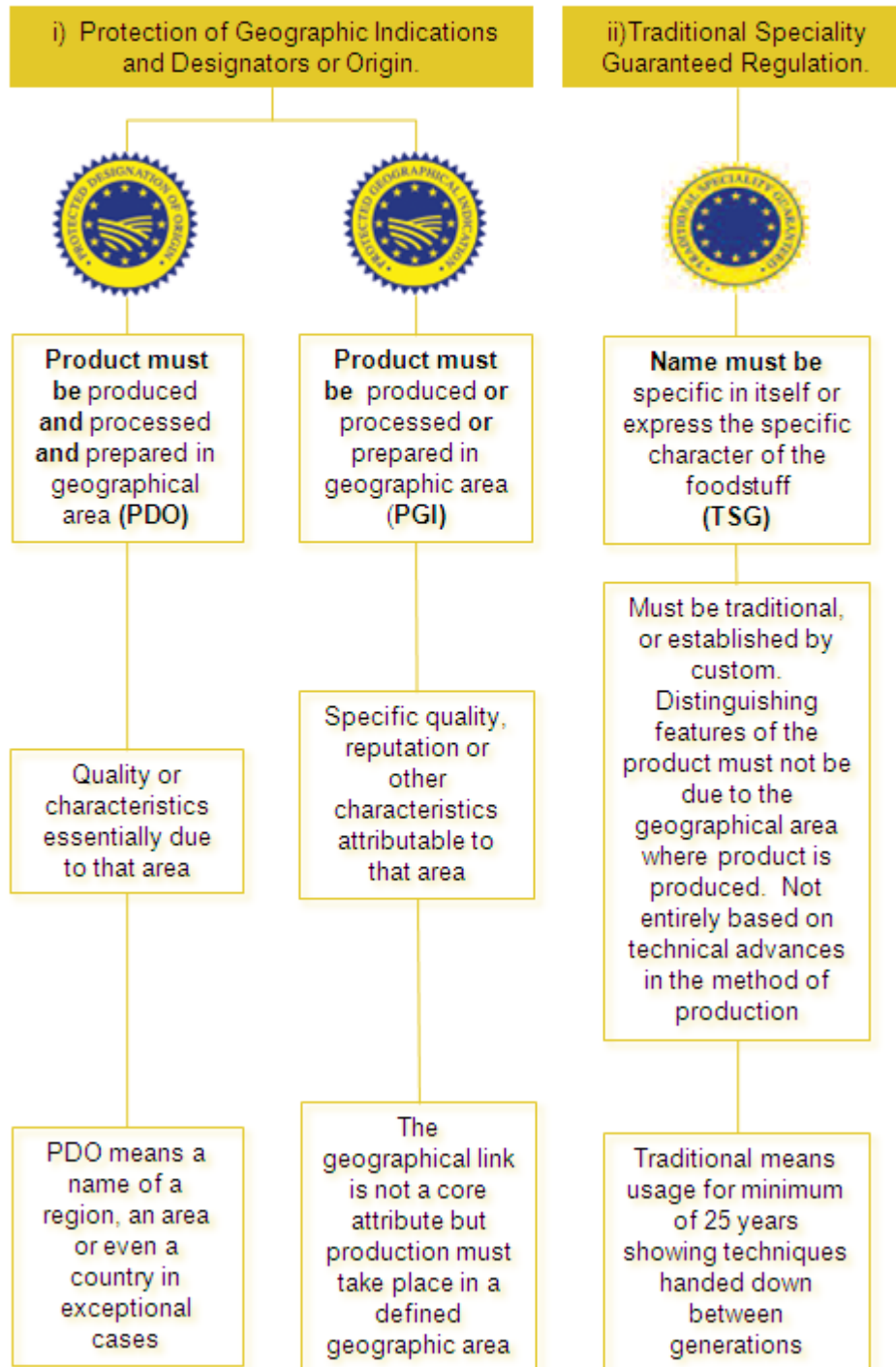
Products must be produced or processed or prepared in the geographical area. Specific quality, reputation or other characteristics must be attributable to that area.

Traditional Speciality Guaranteed (TSG)

Name must be specific in it or express the specific character of the foodstuff. Must be traditional, or established by custom. Distinguishing features of the product must not be due to the geographical area this product is produced in or entirely based on technical advances in the method of production.

PRODUCT DESIGNATIONS FALL INTO 2 CATEGORIES

- i) Linked to a particular geographic territory
or
- ii) Relating to a particular production method



Foods Covered

Most foods intended for human consumption can register including meat, dairy and fish products, honey, fruits and vegetables, beer, beverages made from plant extracts, bread, pasta, pastries, cakes, biscuits and confectionery. Examples of other products which can also be registered under particular designations are as follows:

Protected Designation of Origin (**PDO**) and Protected Geographical Indication (**PGI**) natural gums and resins, hay, essential oils (for example lavender oil), mustard paste, cork, cochineal, flowers and ornamental plants, wool, wicker and scutched flax.

Traditional Speciality Guaranteed (**TSG**): pre-cooked meals, prepared condiment sauces, soups and broths, ice cream and sorbets, chocolate (and other food preparations containing cocoa).

Who can apply?

Applications for each of the three designations can be put forward by groups of producers and in some cases individual products which are unique. These groups may include other interested parties (for example a cheese producer may include the dairy farmer or butchers in the case of applications for meat). Individuals can also put forward applications for either of the two geographical designations (i.e. Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI))

- Provided the defined geographical area has characteristics which differ from neighbouring areas
- Or if the product has characteristics which are different from those produced in neighbouring areas.

It is important to note that producers who are not part of the original applicant group, but who can show to the satisfaction of the nominated inspection body that their product conforms fully with the registered specification, may use the registered name.

Product Names

Names registered under the two geographical designations (**PDO/PGI**) may be traditional but otherwise must have a geographical descriptor and be linked to an area. Names that cannot be registered under these two designations are:

- Those which are likely to be confused with a plant variety or animal breed although it may be possible to register such a name with a geographical denominator i.e. Connemara Hill Lamb.
- Generic names – however, it may be possible to register a geographical name which is partly generic.

Names registered under the Traditional Speciality Guaranteed (**TSG**) designation must be specific (for example, pumpernickel, haggis) or express the characteristic of the product (for example, corn fed chicken). The name must not be misleading about the particular features of the food.

Trademarks and PDO/PGI

A name cannot be registered for a PDO or a PGI if a similar trade mark already exists which, because of its reputation and renown or the length of time it has been used, might lead to confusion as to the true identity of the product.

Stages and Lead Times Involved

The entire application process can take 2 years and involves the following stages:

- Initial application and supporting documentation should be submitted to: Food Division, Department of Agriculture, Food and the Marine (DAFM).
- Examination of applications is initially undertaken by the Food Division of DAFM and can involve communications and meetings with the applicant to resolve any issues and queries. Completed applications are required to undergo a national objection procedure which involves consultation with interested parties in the Republic of Ireland. This process usually takes 12 weeks.

- After consultation, and once DAFM is satisfied that the conditions required by the scheme have been met and any domestic objections have been addressed the application is sent to the European Commission in Brussels.
- The Commission have 12 months to examine the application and can ask questions at which point the clock stops. This process may also involve the Commission seeking advice from a Scientific Committee set up for that purpose.
- If the Commission is satisfied, details of the application are published in the Official Journal (OJ) of the European Union and there is a further period of six months within which objections by other Member States and Third (non-EU) countries or interested parties in those countries may be lodged. If no admissible objections are received the product is registered.
- If the Commission rules that any of those objections are admissible then there is a further period of six months in which Ireland and the objecting party try to resolve the matter bilaterally. If an acceptable resolution is found then the name is registered and publication to that effect is made in the OJ to confirm that the product is now registered as a protected food name.
- If the objections are unresolved then the final decision on registering the product is taken by the EU Standing Committee meeting.

Specifications

All the designations require a precise product specification. This must include information about the method of production including the origin, nature and characteristics of the raw materials. Historical evidence linking the product to the geographical area or to substantiate the specific character of the product will also be required. The specification can be made public.

Inspection Bodies

Products registered under the three designations may be subject to inspection to ensure that the requirements of the registered specification are met. Applicants must nominate an inspection body such as Teagasc, NSAI or private inspection bodies who are required to be accredited to European Standard EN 45011. In addition DAFM require inspection bodies to be accredited to the national accreditation body INAB.

The costs of inspection are a matter between the applicant and the inspection body.

Product Protection PDO/PGI

The registered name of the product is protected from any direct or indirect commercial use by an unregistered producer. This includes expressions such as 'style', 'type', 'method', 'as produced in' or anything similar. Any false or misleading indication as to the provenance, origin, nature or essential qualities of the product placed anywhere on the packaging that may convey a false impression are similarly not permitted. Only products which are registered will be eligible to be labelled as being Protected Designation of Origin or Protected Geographical Indication or use the initials PDO or PGI and use the Community Symbol.

Traditional Speciality Guaranteed

The registered product will have the exclusive use of the name and Community Symbol and Indication. If there are valid formal objections to the application by others who are shown to be economically disadvantaged, the registered product can apply to use the Community Symbol and Indication but will not have exclusive use of the name.

Enforcement

Once names are registered they are protected by the enforcement agencies in the member states. In the Republic of Ireland enforcement is carried out by DAFM, Local authorities' trading standards and environmental health departments.

Existing Irish products registered

Clare Island Salmon (PGI)	Smoked Salmon	Ireland			Company uses PGI as protection for its unique Positioning against counterfeit products.
Dairygold – Imokilly Regato (PGI)	Regato Cheese	Ireland			Dairygold registered Imokilly targeting export markets mainly Greece.
Timoleague Brown Pudding (PDO)	Processed Pork	Ireland			Staunton foods of Ballinspittal in Cork, originally Registered Timoleague Brown Pudding
Connemara Hill Lamb (PGI)	Lamb	Ireland			Used for Hill Lamb born and reared in Connemara which mature at a slower rate and is seasonally available from July.

Useful Contacts

DAFM website: www.agriculture.ie

Bord Bia website: www.bordbia.ie

European Union (EU) website: www.ec.europa.eu/agriculture/foodqual/

Part 3

Case Studies –Issues and Rulings

(i) PDO/PGI applications

ITALY

Lardo Di Colonnata: PGI

The case of Lardo di Colonnata illustrates the potential for disputes during the application process, based on the definition of the geographic area of production. The application for PGI was started by a small group of traditional producers grouped into an Association (Associazione di tutela del Lardo di Colonnata). The application and product specifications indicated that the boundaries of the production area were limited to the small village of Colonnata (500 inhabitants), located in a mountain area, near marble quarries, from which the traditional Lardo derives its name. Some larger firms producing Lardo di Colonnata (and other salami products) set up another association (Consorzio per la Tutela dei Salumi Tipici delle Apuane) and presented an “alternative” product specification (in 2000).

The result was that two different applications for the same denomination were therefore presented to Regional (Tuscan Region) and National Authorities (the Ministry of Agriculture). Both institutions decided to reject the Consorzio’s application (because the production area was too wide as compared to the name of the product, and on the basis that the production techniques were not always “traditional”) and pushed forward the Associazione proposal.

The Consorzio’s producers objected to the decision taken by the public Authorities, in compliance with the national objection procedure implementing Reg. EEC 2081/92, in particular during the public hearing. In 2001, the Consorzio appealed also to the Administrative Regional Tribunal (TAR – Tribunale Amministrativo Regionale) against the decisions taken by the Public Authorities, which, in the opinion of the Consorzio, had not taken into account the documents and evidence provided by the Consorzio. The TAR initially suspended the decisions taken by public

Authorities, but then the Consiglio di Stato (Decision n.6369/2005) decided in favour of the Associazione and the Public Authorities. The Ministry of Agriculture subsequently published the product specifications of the Associazione's application in the Italian Official Journal. The Consorzio, in compliance with the National procedures of registration, and in particular with the objection procedures, presented a formal opposition but the Ministry rejected this and soon after transmitted the application to the EU Commission, which was published on 5 June 2003 in the *Official Journal of the European Union* C131. The registration of the name was published on 27 October 2004 in the *Official Journal of the European Union* L324.

Culatello di Zibello-PDO

Culatello di Zibello (PDO) is a traditional cured ham produced in the region of Parma (Italy). The historical roots of the product are linked to the characteristics of small farm households, where pigs were bred for family consumption. Until recent decades, most Culatello production was undertaken at a household level, with only a few small restaurants and shops producing it on a commercial scale. "Industrial" production of Culatello began in 1980, by a local firm. During the application of the PDO for the Culatello di Zibello, one group of artisan producers requested a long seasonal period of production, whereas industrial producers argued for shorter, year-round production to be allowed. In the end, after a period where no decision was made, the local governments (Regione Emilia Romagna) reached a compromise whereby two designations, with different codes of practice, were applied. The first designation is the "Culatello di Zibello" PDO for the year-round production and the second is the "Culatello di Zibello of the Consorzio del Culatello", which is an internal differentiation within the same PDO for artisan producers with a tight code of practices and is highly reflective of the traditional, artisan method and excludes industrial producers.

Salame di Felino PGI

"Salame di Felino" (Parma) is not yet registered due the opposition of some large Industrial producers. In fact, there is a pending case at the European Court of Justice (ECJ) regarding this product. The producers located in the area of Parma started the process of official PGI recognition almost six years ago but the registration delays

are due to the strong opposition from large industrial producers (ASSICA) who are in favour of modern production techniques, especially regarding the use of additives, origin of the raw material (meat and fat), use of bowels (natural or synthetic) and minimum period of seasoning.

France

Morbier-PDO

Another case which has seen a dispute over the definition of the area of production and location of processing workshops is Morbier cheese. This cheese originates in the mountainous Jura region of France, close to the Swiss border where the small town of Morbier is located. However, despite its geographical name, the cheese had also been produced for decades in two other regions of France, Brittany and the Massif Central. An application from Jura based-producers to register Morbier was made in June 1990.

The application defined a large area of production including villages up to 110km from the town of Morbier. The INAO (*Institut National de l'Origine et de la Qualité*) received 70 objections to the application, mainly over the definition of the area from dairies located outside of the region (some located just 100km from Morbier). The objectors' claims were dealt with by a consultancy commission who organised six meetings over a three-year period in order to allow any interested parties to take part in the discussion. The PDO was finally granted in December 2000 with a slightly different area of production to the area proposed in the original application. The dairies located outside of the area of production were given a transitional period of five years to comply with the regulation. Some of these firms relocated production inside the area. Others who were excluded from using the name have developed alternative trademarks. During the interviews undertaken as part of the field work for this study the objectors in the Morbier case acknowledged that the large discussions that took place as part of the objection procedure were useful to make their objections heard.

Germany

Spreewälder Gurken PGI

The national court in Germany considered that the PGI registration might be invalid because several criteria of the regulation had not been met. In particular, the national court considered that the designation had been known to consumers for centuries as referring to products cultivated in an area much smaller than the area designated by the German authorities in the specification. It also considered that the PGI designation suggested to consumers that all the gherkins came from the designated area and were, consequently, of a particular quality. The court indicated that the specifications were misleading to consumers because they provided that only 70% of the gherkins had to come from the area. The national court was of the view that registration of the designation Spreewälder Gurken as a PGI may have infringed Articles 2 and 4 of the previously effective Regulation No 2081/92 since the nature of the product and the expectations of consumers meant that it should have been registered as a PDO. For these reasons, the national court considered that the specifications, as submitted by the German government and registered by the Commission, did not fulfil the criteria for a PGI and that the registration might be invalid. It referred the question to the ECJ. The ECJ confirmed that the PGI registration was valid (C-269/99 - Carl Kühne GmbH & Co. KG and others v. Jütro Konservenfabrik GmbH & Co. KG). However, its decision was based solely on the finding that the Commission acted lawfully in adopting the regulation on the basis of information provided by the German authorities. Therefore, the ECJ did not rule on the origin of the raw materials (ingredients) used in the PGI, and left the decision on this point to the courts of the Member States.

The producers' group of Spreewald gherkins believe that the profile of the area has been improved through the PGI status. About 60% of the German citizens know the Spreewald region through the association with its gherkins. In addition, tourism (including hotels and restaurants) could increase incomes in the region.

U.K.

Melton Mowbray Pork Pies -PGI

The Melton Mowbray Pork Pie Association applied for PGI status in 1999, on behalf of five local producers using a traditional recipe. The application relied on the historic significance of the local area in producing pies and the traditional recipe. The application was disputed by Northern Foods, a large food manufacturer that produced pork pies outside the proposed PGI area and sold them as Melton Mowbray Pork Pies. Northern Foods argued that there was no relationship between the PGI area and the nature of the product or its history of production and felt that the main aim was to exclude competitors from producing this premium product. Northern Foods has now invested in the traditional recipe. Consequently, the vast majority of pies sold as Melton Mowbray Pork Pies now originate from within the PGI area and are produced according to the traditional recipe. Melton Mowbray Pork Pie received its PGI status in October 2008, almost 10 years after the original application.

(ii) Origin of ingredients PDO/PGI Products:

Italy

The retailers and Consorzi interviewed for the Italian case study believe that most consumers do not know the characteristics of the product specifications for PDO/PGI products. As a consequence, few consumers know the characteristics that PDO/PGI products “should” have. This is especially relevant for PGI products where the origin of the raw materials (in particular beef) may be distant. In Italy, the case of Bresaola della Valtellina PGI (a processed meat product) has recently come to public attention. The product is being produced by some firms using meat from Bovine-Zebu in Brazil. According to these firms, the Brazilian meat has specific characteristics which are suitable as an ingredient for the final product.

The Slow Food Association and the farmers’ union (Coldiretti) claim that this is an important example of consumers being misled because they have no knowledge of

the true origin of the meat. Despite this, only one newspaper (La Repubblica) has dedicated a full page to the topic while other newspapers have given it much less coverage. However, the Consorzio della Bresaola della Valtellina has not concealed the origin of the meat. On the website of the Consorzio it states: “Beef meat used in the production process, mostly from South America, is carefully selected by Bresaola’s producers and obtained only from wild living animals, the most suitable for the production of Bresaola della Valtellina”.

The issue of information on the origin of ingredients in PGI products also arises for other processed PGI products from Italy. In the cases of Speck dell’Alto Adige, Mortadella di Bologna, and Zampone e Cotechino di Modena the origin of the raw material is not defined in the product specifications.

Spain

In Spain, the use of Turrón de Jijona in processed products and its labelling has been standardized through rules set down by the association of producers. As a result, the use of Turrón de Jijona as an ingredient and reference to the PGI name can only be made for those products containing a minimum percentage of this product (17% for ice creams). In such cases, the producers using Turrón de Jijona as an ingredient can also use the label (albeit with a different colour) of the collective trademark of the association. According to the rules, producers who want to use Turrón de Jijona as an ingredient need to make an application to the Association. Certification and supervision of compliance with the rules is carried out by the Foundation of Turrón.

UK

In the UK, the Stilton Cheese Makers’ Association encourages the use of White/Blue Stilton cheese in processed products and uses a voluntary approach to the use of the protected name in cases where food manufacturers use White/Blue Stilton cheese as an ingredient. The main issues are how the name is used in product labelling (which is covered by general food labelling legislation) and the use of the Association logo.

Germany

Thomy, an affiliate company of Nestle used Spreewälder Gurken for a potato salad sauce under the name “Kartoffelsalat-Sauce mit Spreewälder Gurken”. The producers’ group raised an objection, arguing that the excellent reputation of the PGI had been exploited and that only undertakings meeting the specifications (applied in the Spreewald region) could use the geographical indication. The district court (Landgericht Berlin) decided to stop further distribution of the potato-salad sauce (Landgericht Berlin, Decision of 23 August 2005 - 102 O60/05). In a bilateral agreement between Thomy and the Spreewald producers, the company was allowed to sell the salad-potato sauce until July 2006.

The Federation of German Consumer Association (VZBZ) and the producers’ Group of Spreewälder Gurken stated that there is no evidence that consumer were confused as a result of the specifications of origin of the Spreewälder Gurken (and the fact that 70% of the raw materials must be produced within the area). However, VZBZ has criticised the PGI more generally for misleading consumers. In its view, the PGI suggests a regional origin of a product whose raw material ingredients might in reality come from many other parts of the world. In a position paper, the VZBZ describe some products where this is the case:

- “Nürnberger Lebkuchen” is a bakery product which is processed in Nuremberg but contains ingredients sourced from many parts of the world.
- For “Schwarzwaldforelle” it is not required that the trout be raised and fished in the Black Forest region;
- Meat products such as “Schwarzwälder Schinken” or “Ammerländer Schinken” use meat from different regions and only the processing has to take place in the region in order to be eligible for PGI protection.
- In the case of Quebecker Marzipan, the VZBV expressed the view, after consulting all consumer organisations at the State level, that there is no evidence of consumer confusion, reflecting the fact that consumers know that almonds do not grow in Germany.

Hungary

The issue is that a number of paprika producers were selling a mixture of Hungarian and South American paprika under names or labels incorporating the paprika producing regions' names. While consumers appear to have been unaware of this fact, it became a major issue in Hungary when aflatoxin contaminated paprika from South America was used by the producers. At issue was the combination of the use of an unsuitable product (the South American paprika) and the use of an origin label which misled consumers to believe that the paprika they bought was from the region mentioned on the package. This example is not directly concerned with the lack of information on the origin of raw materials in PGI products, as Szegedi Fűszerpaprika Örlemény is applying for a PDO, not a PGI. However, it highlights the potential consumer protection that a PDO provides, because if the PDO is granted all paprika used in the product will have to come from the region, which would not necessarily be the case if a PGI were given instead.

(iii) Trademarks/Generic and PDO/PGI's Designations

Feta: In the dispute about Feta cheese, the ECJ had to decide on the criteria for determining a generic product. The Greek government had applied for registration of "Feta" as a PDO in 1994. Due to disagreement about the generic status of feta, the Commission conducted a comprehensive consumer survey and sought the opinion of the competent Scientific Committee. On this basis, it decided not to include feta cheese in its proposed list of generics, and registered feta as a PDO. Other Member States challenged the registration in the *Feta I* case before the ECJ 90 in 1999 the ECJ annulled the registration because the Commission, in deciding whether 'feta' was a generic name, had not taken due account of all the factors listed in Regulation 2081/92. In particular, it had not taken any account of the fact that the name had been used on existing products which were legally on the market and had been legally marketed for a considerable time in certain Member States, other than Greece. The ECJ ruled that the contested registration of "Feta" PDO had to be annulled. Accordingly, the Commission started a new inquiry about the status of feta

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on the basis of a questionnaire sent to Member States. The information received was presented to the scientific committee, which in 2001 concluded unanimously that the name 'feta' was not generic in nature. In October 2002, the Commission again registered the name 'feta' as a PDO. This registration was once again challenged by certain Member States before the ECJ in the *Feta II* case.⁹¹ this time; the ECJ held that the registration was valid. The Commission had taken all relevant factors into account, and several relevant and important factors indicated that the term had not become generic.

Grana Biraghi: In the recent *Grana Biraghi* case,⁹³ an Italian association of producers of Grana Padano cheese challenged the trademark Grana Biraghi, which had been registered as a community trade mark (A Community Trade Mark is any trademark which is pending registration or has been registered in the EU as a whole rather than on a national level within the EU).

The association maintained that the trade mark was contrary to the PDO for Grana Padano cheese. The defendant claimed that the PDO protection only covered the expression "Grana Padano" as a whole, whereas the word "grana" was generic and its use therefore not contrary to the PDO protection. The European Court of First Instance (CFI) held that the word "Grana" was not generic in nature and therefore the trademark Grana Biraghi was invalid.

Parmigiano Reggiano: In this case, the Commission, after complaints from several economic operators, brought proceedings against Germany for failing to ensure on its territory the protection of the PDO 'Parmigiano Reggiano' against products designated as 'Parmesan' which did not comply with the specification for the PDO. The case concerned Regulation No 2081/92.⁹⁴ Germany argued that a PDO was only protected in the exact form in which it is registered, and that therefore the label "Parmesan" did not infringe the PDO 'Parmigiano Reggiano'. Further, Germany argued that 'Parmesan' had become a generic name for hard cheeses of diverse origins grated or intended to be grated, distinct from the PDO 'Parmigiano Reggiano'. The ECJ rejected both arguments.