

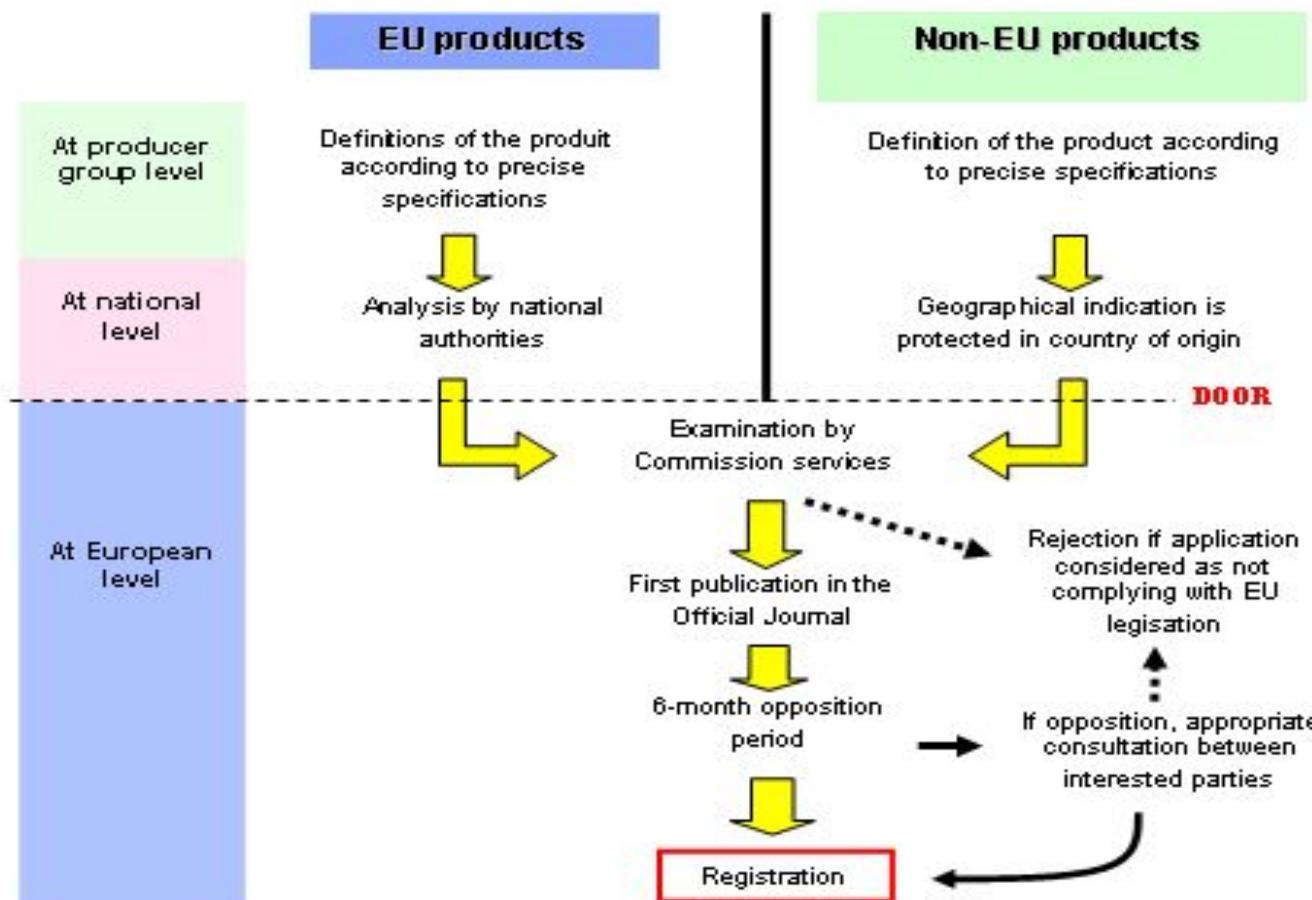
Protection of GIs in Europe

Michael Blakeney

Outline

- EU trade in GIs products
- EU legislation
- Infringement
- Traditional Specialities Guaranteed
- Proposed extension of EU law to handicrafts

In 2007 PDO and PGI agricultural products had an estimated wholesale value of 14.2 billion





1. EU schemes



Legislation

- Wines – Regulation (EC) No 1234/2007
- Spirits – Regulation (EC) No 110/2008
- Agricultural products and foodstuffs - R(EU)
No 1151/2012 (replaces R(EC) 510/2006)

→ This presentation will focus on agricultural products and foodstuffs



- PDO: Protected Designation of Origin
- PGI: Protected Geographical Indication
- TSG: Traditional Specialty Guaranteed



= Geographical Indications (GIs)



Comparison

	PDO	PGI	TSG
Name	Specific place, region or (exception) country	Specific place, region or country	≠ Geographical Indication
Link with geographical area (GA)	Essentially or exclusive	Quality, reputation or other characteristic	No delimited GA. Traditional method of production or product composition.
Production steps	All in GA	At least one in GA	Anywhere
Raw materials	GA	Anywhere	Anywhere



European
Commission



PGI and PDO

COMMON POINTS

- Type of products
- Geographical names
- Products have to fully originate in the region of which they bear the name
- Registration Procedure
- Protection level
- Controls

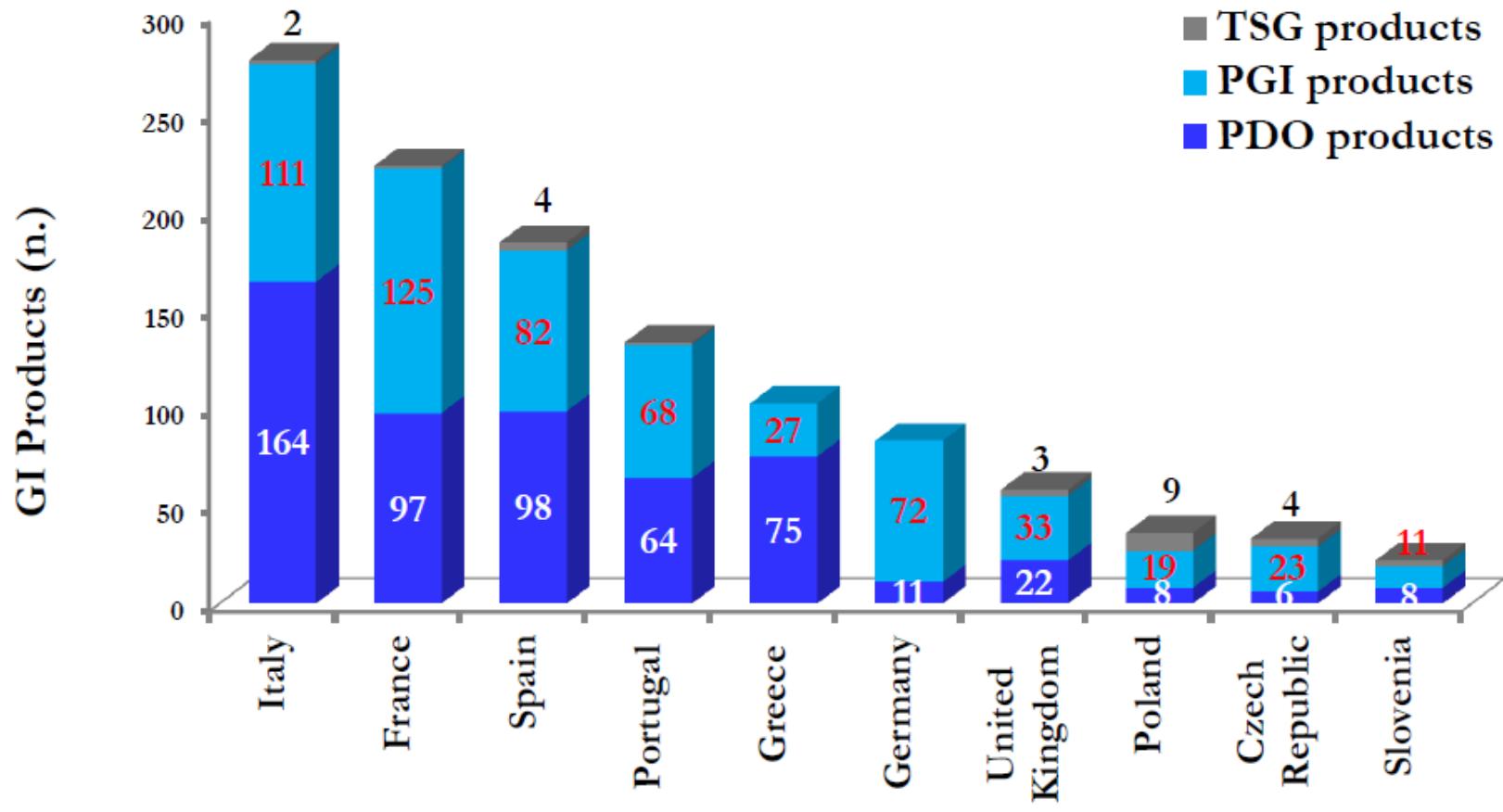
DIFFERENCES

- Link to the geographical environment (stronger for PDO)
- Reputation (only PGI)
- Number of production steps to be realized in the region
- All raw materials originate from the region (only PDO)

Top ten countries as concerns the number of PDO PGI and TSG products in EU (including wine sector) Source: Qualivita, Directorate General for Agricultural and Rural Development 2015.

	PDO	PGI	TSG	GI Spirits	Total
Italy	569	229	2	39	839
France	454	200	1	78	733
Spain	188	123	4	28	343
Portugal	94	78	1	19	192
Greece	108	141		19	268
Germany	24	98		35	157
United Kingdom	25	35	3	3	66
Slovenia	22	14	3	7	46
Czech Republic	16	25		1	42
Poland	8	19	9	4	40

Comparison of the number of PDO, PGI and TSG products amid different EU Countries (Source: Qualivita, Directorate General for Agricultural and Rural Development 2015)



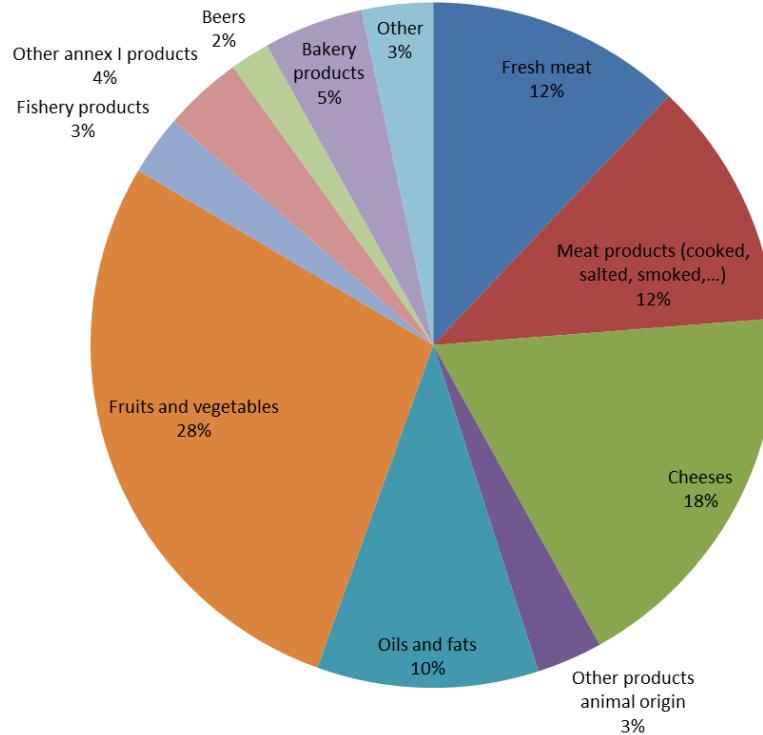
*Data sources: Istat Qualivita/Ismea



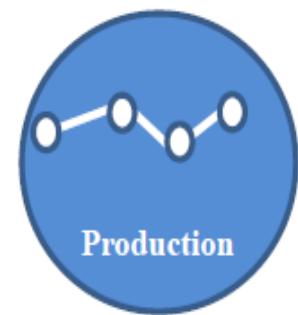
Overview PDO/PGI per sector

(11.09.2013 - n=1128)

Overview PDO/PGI by sector



Economic Value of GI products in Italy: wine sector



Production

- Operators: 90,000*
- Utilized Agricultural Area : 350,000*
- Certified production: 22 ml hl.
- Production turnover : 7,1 billion €*
- Sales turnover : 9 billion €*



Export

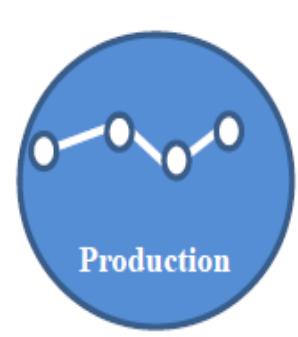
- Export turnover : 4,4 billion € → 35,7% of the total
Export turnover*

Social Value of GI products in Italy

- Accessible policies also for small farmers and agrofood producers/processors (Rural Development Policies)
- Strong link with the territories, regions, traditions, etc.;

*Data sources: Istat Qualivita/Ismea, 2015

Economic Value of GI products in Italy: food sector



Production

Operators: 80.231*
Utilized Agricultural Area : 159.550*
Certified production: 1.3 mln. tons.*
Production turnover : 6,6 billion €*
Sales turnover : 7.9 billion €*



Export

Production exported: 418.512 tons. 32% of the total production exported*
Export turnover : 2,5 billion € → 35,7% of the total Export turnover*

Social Value of GI products in Italy

- Accessible policies also for small farmers and agrofood producers/processors (Rural Development Policies)
- Strong link with the territories, regions, traditions, etc.;

Number of GIs products at regional level

PDO and PGI products are distributed throughout the national territory and involve more or less all the Italian regions

Veneto = 88



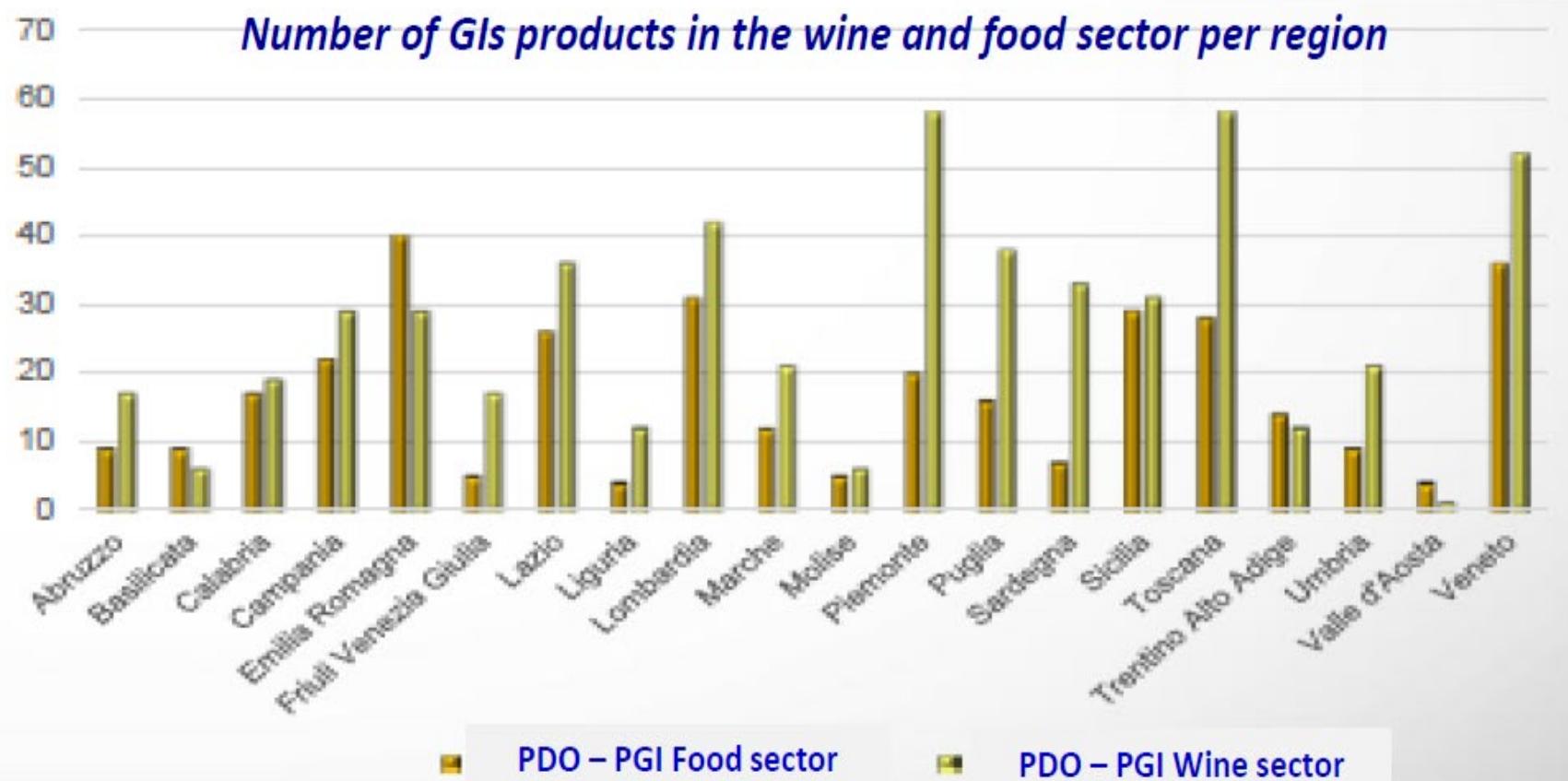
Values that include the wine sector

Toscana = 86

Piemonte = 78

Lombardia = 73

Emilia Romagna = 69



The strategic role of GIs products in ITALY



PDO

164



PGI

111



TSG

2

Total of GIs products = 264 : 1° EU Country for number of recognized products

Number of GIs products divided by sectors



Dairy products



Meat products



Extra virgin
Olive oil



Fruits and
vegetables



Other products

50

37

45

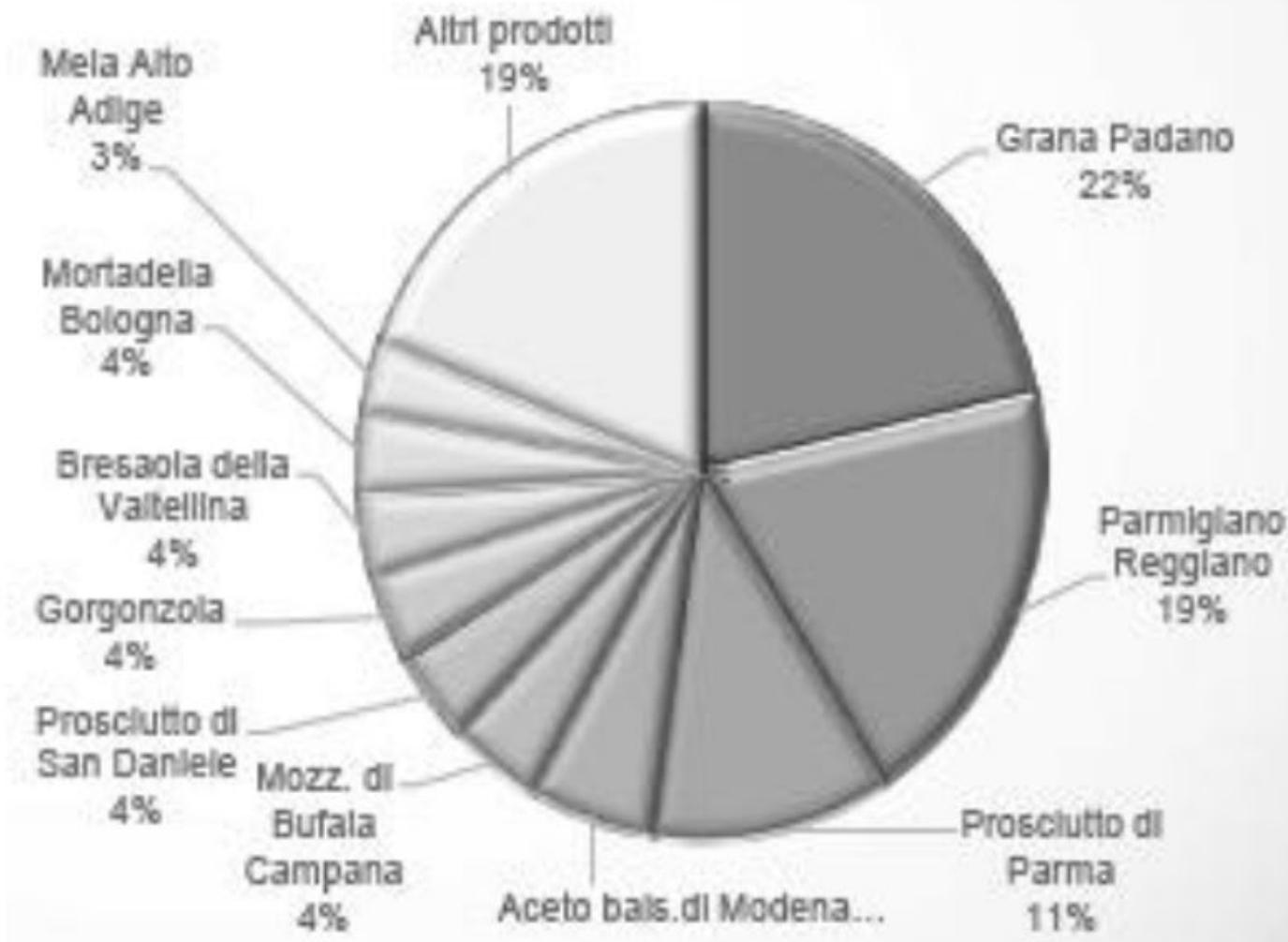
102

36

The distribution of the production turnover as concerns the first ten PDO-PGI products of the food sector

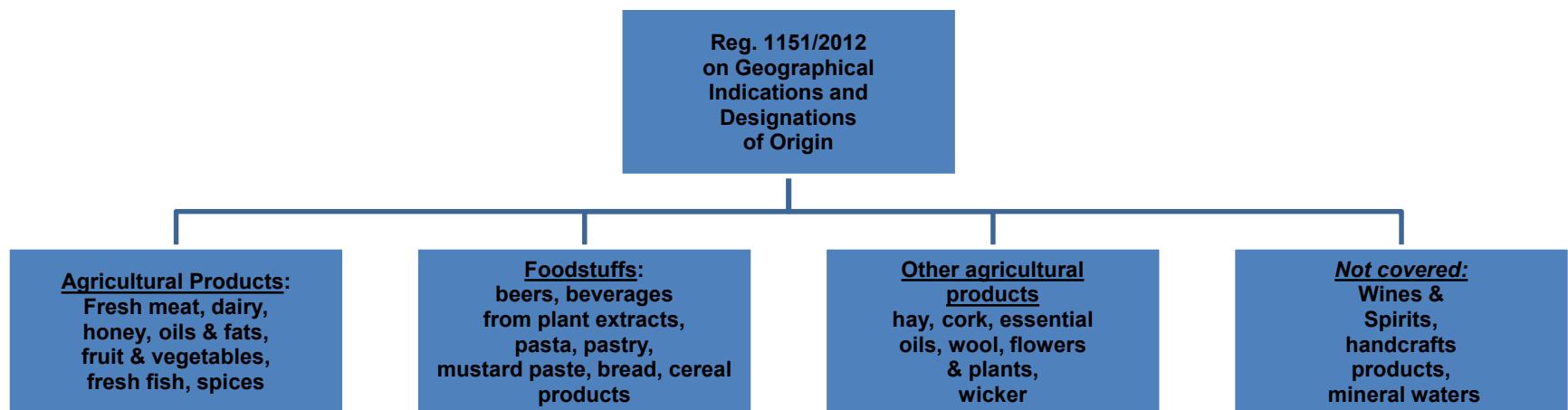
Important chart because it shows that only few GIs products are economically relevant in the Italian agro-food sector.

This aspect should be taken into account by policy – makers. In fact the 81% of GIs products economic value is originate by the first ten GIs products





Scope of Regulation (EU) 1151/2012



Regulation (EU) No 1151/2012

Recital (4) Operating quality schemes for producers which reward them for their efforts to produce a diverse range of quality products can **benefit the rural economy**.

This is particularly the case in **less favoured areas**, in mountain areas and in the most remote regions, where the farming sector accounts for a significant part of the economy and production costs are high.

In this way quality schemes are able to contribute to and complement **rural development policy** as well as market and income support policies of the common agricultural policy (CAP). In particular, they may contribute to areas in which the farming sector is of greater economic importance and, especially, to disadvantaged areas.

Regulation (EU) No 1151/2012

(5) The **Europe 2020** policy priorities as set out in the Commission Communication entitled ‘Europe 2020: A strategy for smart, sustainable and inclusive growth’, include the aims of achieving a competitive economy based on knowledge and innovation and fostering a high-employment economy delivering social and territorial cohesion.

Agricultural product quality policy should therefore provide producers with the right tools to better identify and promote those of their products that have specific characteristics while protecting those producers against unfair practices.

Article 1 -Objectives

1. This Regulation aims to help **producers of agricultural products and foodstuffs** to communicate the product characteristics and farming attributes of those products and foodstuffs to buyers and consumers, thereby ensuring:
 - (a) fair competition for farmers and producers of agricultural products and foodstuffs having value-adding characteristics and attributes;
 - (b) the availability to consumers of reliable information pertaining to such products;
 - (c) respect for intellectual property rights; and
 - (d) the integrity of the internal market.

Article 1 -Objectives

2. This Regulation establishes quality schemes which provide the basis for the identification and, where appropriate, protection of names and terms that, in particular, indicate or describe agricultural products with:
 - (a) value-adding characteristics; or
 - (b) value-adding attributes as a result of the farming or processing methods used in their production, or of the place of their production or marketing.

Article 2 -Scope

1. This Regulation covers agricultural products intended for human consumption listed in Annex I to the Treaty and other agricultural products and foodstuffs listed in Annex I to this Regulation.

Annex I of the EU Treaty includes basic foods intended for human consumption such as meat, dairy and fish products, honey, fruits and vegetables

Art. 5(1) Designation of Origin

1. For the purpose of this Regulation, '**designation of origin**' is a name which identifies a product:
 - (a) originating in a specific place, region or, in exceptional cases, a country;
 - (b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; **and**
 - (c) the production steps of which all take place in the defined geographical area.

Art 5(3) Designation of origin

3. Notwithstanding paragraph 1, certain names shall be treated as designations of origin even though the raw materials for the products concerned come from a geographical area larger than, or **different** from, the defined geographical area, provided that:
 - (a) the production area of the raw materials is defined;
 - (b) special conditions for the production of the raw materials exist;
 - (c) there are control arrangements to ensure that the conditions referred to in point (b) are adhered to; and
 - (d) the designations of origin in question were recognised as designations of origin in the country of origin before 1 May 2004.

Only **live animals, meat and milk** may be considered as raw materials for the purposes of this paragraph.

Art 5(2) Geographical Indication

2. For the purpose of this Regulation, '**geographical indication**' is a name which identifies a product:
 - (a) originating in a specific place, region or country;
 - (b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and
 - (c) at least one of the production steps of which take place in the defined geographical area

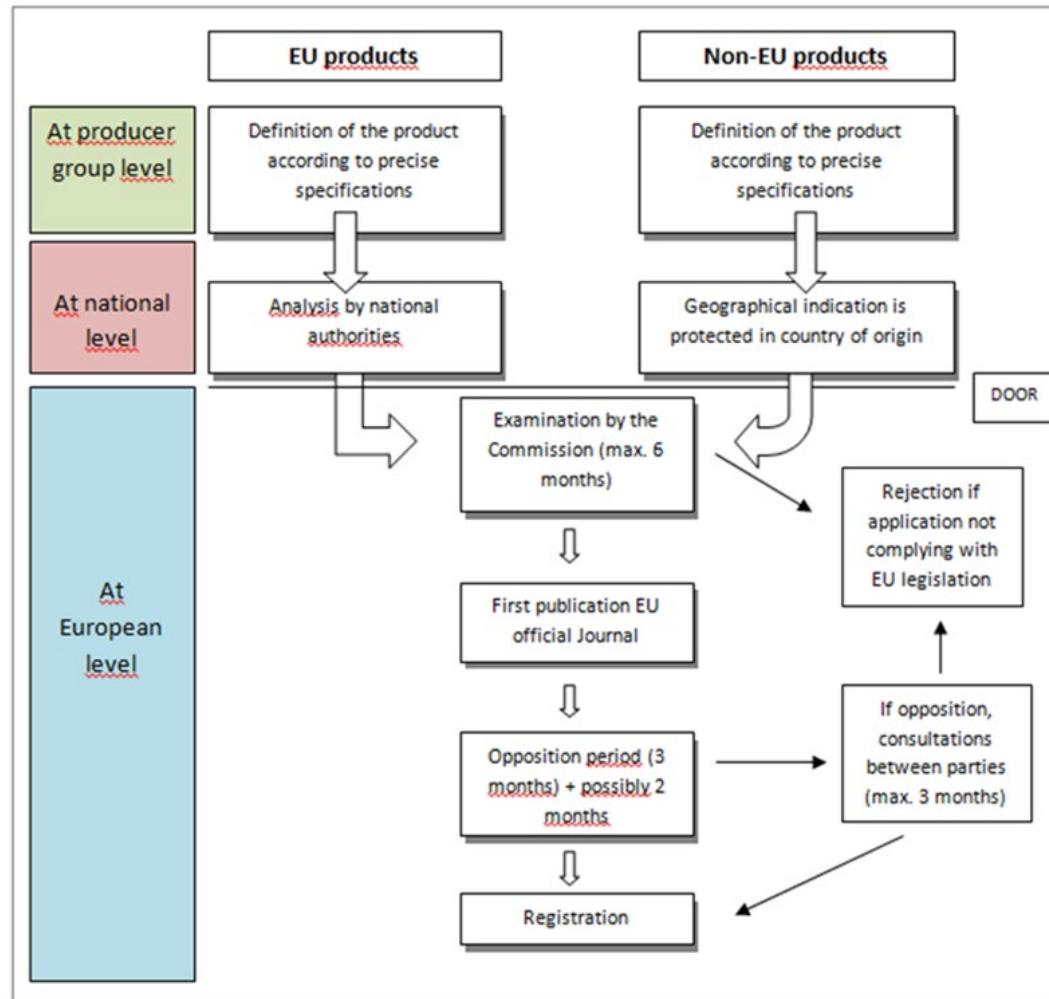


Essential elements of application

- Name
- Description of product
- Rules on labelling, packaging
- Geographical area
- Link between product and geographical area



Application procedure (agricultural products and foodstuffs)



Art.8 Application

1. An application for registration of a designation of origin or geographical indication ...shall include at least:
 - (a) the name and address of the applicant group and of the authorities or, if available, bodies verifying compliance with the provisions of the product specification;
 - (b) the **product specification** provided for in Article 7;
 - (c) a single document setting out the following:
 - (i) the main points of the product specification: the name, a description of the product, including, where appropriate, specific rules concerning packaging and labelling, and a concise definition of the geographical area;
 - (ii) a description of **the link** between the product and the geographical environment or geographical origin referred to in Article 5(1) or (2), as the case may be, including, where appropriate, the specific elements of the product description or production method justifying the link.

An application ... shall, in addition, include proof that the name of the product is protected in its country of origin.

Product Specification Article 7

- To be eligible to use a protected GI ... an agricultural product or foodstuff must comply with a specification as follows:
 - the name of the agricultural product or foodstuffs
 - a description including the raw materials, if appropriate, and principal physical, chemical, microbiological and/or organoleptic characteristics of the product or the foodstuff;
 - the definition of the geographical area ...
 - evidence that the agricultural product or the foodstuff originates in the geographical area Art. 5(2)
 - a description of the method of obtaining the agricultural product or foodstuff ...
 - the details of link with the geographical environment Article 5(3)
 - details of the inspection structures provided for in Article 10;
 - the specific labelling details relating to the indication PDO ... or the equivalent traditional national indications;
 - any requirements laid down by Community and/or national provisions.

Article 10 Opposition Proceeding

1. A reasoned statement of opposition ...shall be admissible only if it is received by the Commission within the time limit set out in that paragraph and if it:
 - (a) shows that the **conditions** referred to in Article 5 and Article 7(1) are **not complied** with;
 - (c) shows that the registration of the name proposed would jeopardise the existence of an entirely or partly identical name or of a **trade mark** or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in point (a) of Article 50(2); or
 - (d) gives details from which it can be concluded that the name for which registration is requested is a **generic** term.

Art. 13 Rights Conferred

1. Registered names shall be protected against:

- (a) any **direct or indirect commercial use** of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name, including when those products are used as an ingredient;
- (b) any **misuse, imitation or evocation**, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as '**style**', '**type**', '**method**', '**as produced in**', '**imitation**' or similar, including when those products are used as an ingredient;

Art. 13 Rights Conferred

1. Registered names shall be protected against:
 - (c) any **other false or misleading indication** as to the provenance, origin, nature or essential qualities of the product that is used on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
 - (d) any other practice liable to **mislead** the consumer as to the true origin of the product;

Art 13 Rights Conferred

3. Member States shall take appropriate administrative and judicial steps to prevent or stop the unlawful use of protected designations of origin and protected geographical indications, as referred to in paragraph 1, that are produced or marketed in that Member State.

To that end Member States shall designate the authorities that are responsible for taking these steps in accordance with procedures determined by each individual Member State.

The Link

- 5(1) For the purpose of this Regulation, ‘designation of origin’ is a name which identifies a product:
- (b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;
- 5 (2) For the purpose of this Regulation, ‘geographical indication’ is a name which identifies a product:
- (b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin;

Specification 7(f) details establishing the following:

- (i) the link between the quality or characteristics of the product and the geographical environment referred to in Article 5(1); or
- (ii) where appropriate, the link between a given quality, the reputation or other characteristic of the product and the geographical origin referred to in Article 5(2);



Example: Scotch Lamb (PGI)

Description:

The product is derived from lambs born, reared throughout their lives, slaughtered and dressed in the designated geographical area.

Geographical area:

The area is defined as the mainland of Scotland, including the islands off the west coast, Orkney and Shetland.



Example: Scotch Lamb (PGI)

Method of production:

Lambs are born and reared throughout their lives in the designated geographical area. The animals will have been produced and slaughtered in accordance with quality assurance schemes accredited to European Standard EN 45011 (ISO Guide 65) and having the same standards, assessments and assessment frequencies as those set by the applicant. They are slaughtered and dressed in the designated geographical area in accordance with the specifications.

Link:

Scotch Lamb has a quality and characteristics arising from extensive grazing on the characteristic pastures of Scotland.

Commission Implementing Regulation (EU) No 717/2011 of
20 July 2011 entering a name in the register of protected
designations of origin and protected geographical indications
(Cornish Pasty (PGI))



Class 2.4. Bread, pastry, cakes, confectionery, biscuits and other baker's wares
UNITED KINGDOM
Cornish Pasty (PGI)

- From August 12 2011, in order to call a pasty a 'Cornish Pasty' certain criteria must be met. The criteria are:
- The pasty is 'D' shaped and crimped (either by hand or mechanically) on one side, *never* on top.
- The distinctive feature of the product is that the filling for the pasty is made up of uncooked minced or roughly-cut chunks of beef (not less than 12.5%), swede/turnip (the two terms are interchangeable for the same product), potato and onion, with a light peppery seasoning.
- The pastry casing is golden in colour, savoury, glazed with milk or egg and robust enough to retain shape throughout the cooking and cooling process without splitting or cracking. The whole is slow-baked to ensure that flavours from the raw ingredients are maximised. The taste is rounded, predominantly tasting of vegetables, light seasoning (salt and pepper), with beef and baked pastry notes.
- The texture of the filling is chunky.

- In addition the pasty will have to be manufactured in Cornwall. This means that although the pasty can be baked outside Cornwall, it must be prepared in Cornwall. The ingredients do not have to derive from Cornwall.
- Those that manufacture Cornish pasties will periodically be checked by a nominated inspection body to ensure the pasties are conforming to the correct criteria. In addition The PGI designation and the appropriate logo developed by the Cornish Pasty Association should be displayed.

Northern Foods Plc v The Department for Environment, Food and Rural Affairs & Anor [2005] EWHC 2971

The Claimant, Northern Foods PLC, seeks to challenge the decision of the Defendant, the Department of the Environment, Food and Rural Affairs ("Defra") to forward to the European Commission an application by the Melton Mowbray Pork Pie Association ("MMPPA") for the registration of "Melton Mowbray Pork Pie" as a protected geographical indication ("PGI") under EC Council Regulation 2081/92/EEC.

Commission Implementing Regulation (EU) No
274/2011 of 21 March 2011, entering a name in the
register of protected designations of origin and
protected geographical indications (Traditional
Cumberland Sausage (PGI))



[Registrations](http://ec.europa.eu/agriculture/quality/door/list.html;jsessionid=pL0hLqqLXhNmFQyFl1b24mY3t9dJQPflg3xbL2YphGT4k6zdWn34!-370879141-)

- Cornish clotted cream (PDO)
- Cornish sardines (PGI)
- Dorset Blue Cheese (PGI)
- Exmoor Blue cheese (PGI)
- Native Shetland Wool (PDO)
- Orkney Island Cheddar (PGI)
- Lakeland Herdwick (PDO)
- Fal Oyster (PDO)
- Yorkshire Forced Rhubarb (PDO)
- Staffordshire Cheese (PDO)
- Scotch Lamb (PDO)
- Scotch beef (PDO)

Applications

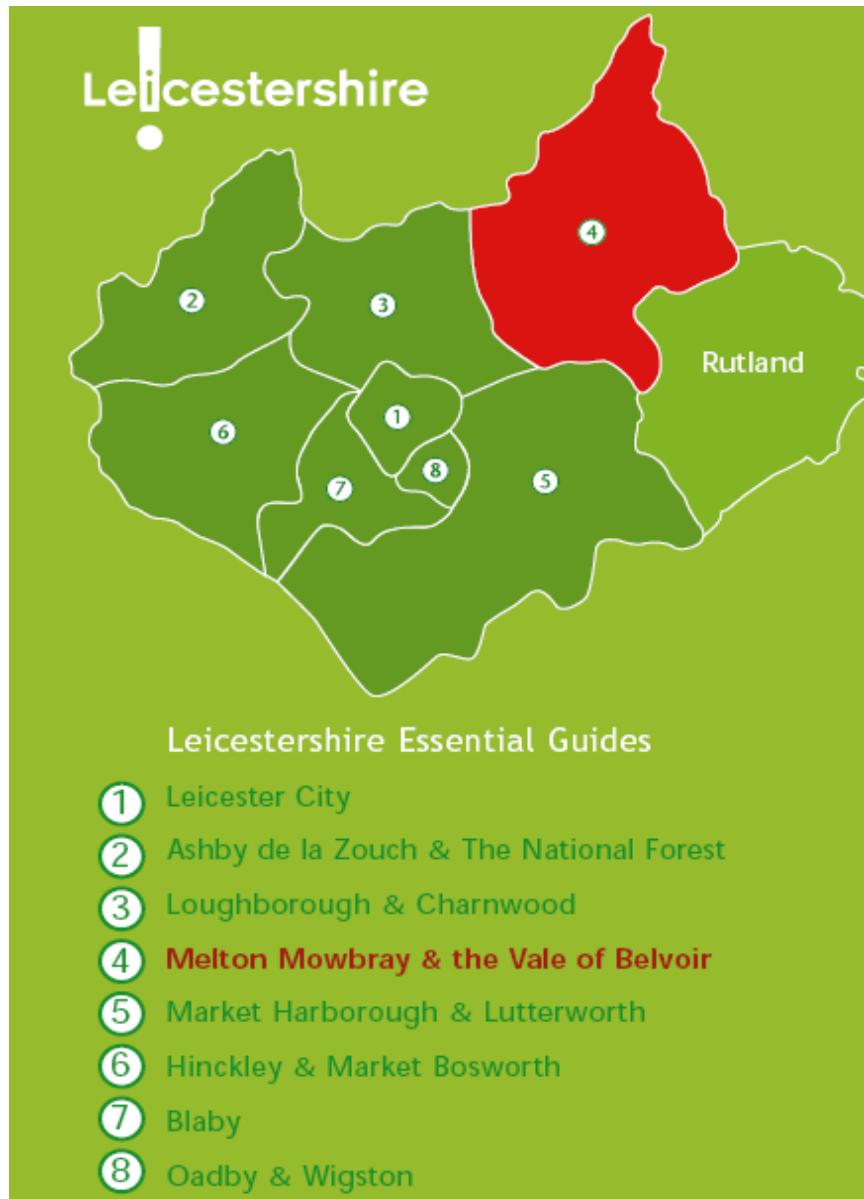
- Fenland Celery (PGI)
- Dorset Blue Cheese (PGI)
- Exmoor Blue cheese (PGI)
- Native Shetland Wool (PDO)
- Orkney Island Cheddar (PGI)
- Lakeland Herdwick (PDO)
- Newmarket sausage (PGI)
- Stornoway Black Pudding (PGI)
- Wensleydale cheese (PGI)

- By the middle of the 18th century, Melton Mowbray in Leicestershire found itself in an area popular for fox hunting. The hunting season coincided with the slaughter of pigs. Some of the pork went into pork pies and these were popular initially with hunt servants and later with those hunting.
- In 1998 the MMPPA was formed to bring together producers of what they would claim to be the authentic Melton Mowbray pork pie.

- The Claimant produces "Melton Mowbray pork pies", although they would not comply with the specification, in Trowbridge, Wiltshire and in Market Drayton, Shropshire.

Northern Foods

- the Claimant sought to challenge the decision of the UK Department of the Environment, Food and Rural Affairs ("Defra") to forward to the European Commission an application by the Melton Mowbray Pork Pie Association ("MMPPA") for the registration of "MELTON MOWBRAY PORK PIE" as a PGI under EC Council Regulation 2081/92/EEC. The geographical area defined in the application covered a large area, including Leicestershire, Nottinghamshire and parts of Northamptonshire and Lincolnshire.



Application ‘MELTON MOWBRAY PORK PIE’

EC No: UK/PGI/005/0335/13.02.2004

4. Specification:

4.1. Name: ‘*Melton Mowbray Pork Pie*’

4.2. Description: *Melton Mowbray Pork Pies have a bow walled pastry case giving them their characteristic bow shape.* The pastry is golden brown in colour with a rich texture. The pork filling is uncured and therefore grey in colour — the colour of roast pork. The texture filling is moist and particulate. The meat content of the whole product must be at least 30 %. Between the filling and the pastry wall is a layer of jelly.

In flavour, the pastry has a rich, baked taste while the filling is full of meaty flavour and seasoned in particular with pepper.

The pies must be free from artificial colours, flavours and preservatives. They are sold in a variety of sizes and weights and through a range of outlets including traditional butchers' shops, supermarkets, delicatessens and food service outlets.

4.3. Geographical area: The town of Melton Mowbray and its surrounding region bounded as follows:

- to the North, by the A52 from the M1 and the A1 and including the city of Nottingham, — to the East, by the A1 from the A52 to the A605 and including the towns of Grantham and Stamford, — to the West, by the M1 from the A52 to the A45, — to the South, by the A45 and A605 from the M1 to the A1 and including the town of Northampton.

The geographical area described above is larger than the original area of production. This takes account of the fact that over time those barriers became less significant and recognises that production of the Melton Mowbray Pork Pie in accordance with the method of production described below has taken place for 100 years in the wider area surrounding Melton Mowbray.

IP Kat, 11 November 2006

Bad news for litigation-lovers. Northern Foods (of the not quite Melton Mowbray pork pie fame) has [dropped its appeal](#) against the decision in its unsuccessful judicial review of DEFRA's definition of the zone from which 'genuine' Melton Mowbray pies can come. Northern Foods had claimed that the zone had been artificially enlarged to include a company dominant in the Melton Mowbray Pork Pie Association, but at the same time had been drawn up in a way which excluded other companies.

Northern Food's decision follows an assurance from DEFRA that, if the European Commission does recognise Melton Mowbray as a PGI, companies will be given 5 years to transfer production in the designated zone.

Northern Foods will also withdraw from the ECJ [reference](#) made in March of this year.



Commission Regulation (EC) No 566/2009 of 29 June
2009 entering a name in the register of protected
designations of origin and protected geographical
indications (Melton Mowbray Pork Pie (PGI))

Whereas:

- (1) Pursuant to Article 6(2) of Regulation (EC) No 510/2006 and in accordance with Article 17(2) thereof, the United Kingdom's application to register the name 'Melton Mowbray Pork Pie' was published in the *Official Journal of the European Union* (2).

(2) OJ C 85, 4.4.2008, p. 17.

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation shall be entered in the register.

Pork Farms Ltd, Stobarts Ltd and Kerry Foods Ltd may, however, continue to use that name for a period of five years from the date of entry into force of this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

ANNEX

Class 1.2. Meat products (cooked, salted, smoked, etc.)

UNITED KINGDOM

Melton Mowbray Pork Pie (PGI)

Melton Mowbray Pork Pie Association

- In gaining PGI status for the Melton Mowbray Pork Pie, the Association aims to:
- Protect the integrity of the Melton Mowbray Pork Pie and resist its denigration at the hands of manufacturers outside the Melton area, thereby ensuring its survival
- Protect the consumer from being misled about the provenance and quality of Melton Mowbray Pork Pies
- Promote the Melton Mowbray Pork Pie so that as many people as possible are able to try this famous regional food
- Encourage growth and investment in the rural economy through promotion to the consumer of the Melton Mowbray Pork Pie as the guaranteed and genuine article
- Protect the good name of the town of Melton Mowbray and therefore protect its important tourist economy
- Reinforce the credentials of Melton Mowbray as the heart of an important rural economy
- Protect the jobs and investment dependant on the Melton Mowbray Pork Pie
- Promote our rural region and fine food heritage through the ongoing support of the Melton Mowbray Pork Pie
- Support the wider initiative to recognise the importance of regional foods



*"I thought that our pork
pies came from
Westminster"*

Wikipedia
*Pork pie or Porkie pie, often
shortened to porkie, is the
Cockney rhyming slang term for
lie.*

*Case C-269/99 Carl Kühne and Others v. Jütro
Konservenfabrik GmbH & Co. KG [2001] ECR I-
9517.*

- Spreewald biological region of Germany particularly suited to cultivation of gherkins. Also a political region
- Spreewalder gherkin protected as PGI.
- Defendant marketed gherkins and sold them as ‘Spreewalder Art’ (Spreewalder style) came from outside the region.
- ECJ – registration of PGI a matter for the local authority.

Production in the geographical area

5(1) For the purpose of this Regulation, ‘designation of origin’ is a name which identifies a product:

(c) the **production steps** of which all take place in the defined geographical area.

3(7) ‘production step’ means production, p

Specification

7(1) (e) a description of the method of obtaining the product and, where appropriate ...information ...as to why the packaging must take place in the defined geographical area to safeguard quality, to ensure the origin or to ensure control, taking into account Union law, in particular that on the free movement of goods and the free provision of services;

Case C-108/01 Consorzio del Prosciutto di Parma and Another v. Asda Stores Ltd and Hygrade Foods Ltd [2003] EUECJ C-108.

Concerned Italian Law No 26 on protection of the PDO "PROSCIUTTO DI PARMA" (of 13 February 1990, which reserved the PDO exclusively to ham obtained from fresh legs of pigs raised and slaughtered in mainland Italy, produced in accordance with provisions laid down in the law.

Article 25 of Decree No 253 implementing Law No 26 of 13 February 1990) prescribed that the slicing and packaging of Parma ham must take place at plants in the typical production area which are approved by the Consorzio, responsible for monitoring Parma ham production.

"PROSCIUTTO DI PARMA" was registered as a PDO under Regulation No 1107/96, under the heading 'Meat-based products'. The Consorzio was registered as an inspection body for the PDO under Article 10(2) of Regulation No 2081/92.

- Asda Stores Ltd, which operated a chain of supermarkets in the United Kingdom, sold ham bearing the description 'Parma ham', purchased pre-sliced from Hygrade Foods Ltd, which itself purchased the ham boned but not sliced from an Italian producer who was a member of the Consorzio.
- The ham was sliced and hermetically sealed by Hygrade in packets bearing the wording "ASDA A taste of Italy PARMA HAM Genuine Italian Parma Ham".
- The Consorzio brought proceedings in the United Kingdom against Asda and Hygrade seeking various injunctions against them, essentially requiring them to cease their activities, on the ground that they were contrary to the rules applicable to Parma ham.



PROSCIUTTO DI PARMA

S44

Produced, sliced and packaged in Parma, Italy, under the supervision of the Istituto Parma Qualità - IPQ - (Agency for Parma Quality Certification) your guarantee of quality and authenticity. Protected Denomination of Origin in compliance with Italian law of february 13, 1990 n. 26 and EU regulation n.

86.99



CITTERIO

taglio fresco



Sliced and
packaged on:

02/16/05

Processing
begun:

11/14/03

For best quality

Consorzio del Prosciutto di Parma v. Asda Stores Limited and Others [2001] UKHL 7.

- The House of Lords sought a ruling from the ECJ as to **whether** the Italian legislation read with Commission Regulation (EC) No 1107/96 and the specification for the PDO Prosciutto di Parma created a valid Community right, directly enforceable in the court of a Member State, to restrain the retail sale as Parma ham of sliced and packaged ham derived from hams duly exported from Parma in compliance with the conditions of the PDO but which have not been thereafter sliced, packaged and labelled in accordance with the specification.

Case C-108/01 Consorzio del Prosciutto di Parma and Another v. Asda Stores Ltd and Hygrade Foods Ltd
[2003] EUECJ C-108

The ECJ, ruled that Regulation No 2081/92 must be interpreted as not precluding the use of a PDO from being subject to the condition that operations such as the slicing and packaging of the product take place in the region of production, where such a condition was laid down in the specification

Generic Indications Regulation (EU) No 1151/2012

Article 6(1) “generic terms shall not be registered as protected designations of origin or protected geographical indications.”

Article 3(6) defines “generic terms” to mean “the names of products which, although relating to the place, region or country where the product was originally produced or marketed, have become the common name of a product in the Union”.

Article 41(2) provides that to establish whether or not a term has become generic, account shall be taken of all relevant factors, in particular:

- (a) the existing situation in areas of consumption;
- (b) the relevant national or Union legal acts

The Feta Cheese cases C-289/96, C-293/96 and C-299/96

- By letter dated 21 January 1994, the Greek Government requested registration of the word ‘Feta’ as a PDO under Regulation 2081/92.
- In response to the request, the Commission indicated that it was concerned that the name “FETA” might have become generic.
- In April 1994 the Commission arranged for a survey of the opinions of some 12,800 nationals of then 12 EC Member States. The Commission concluded that the name “FETA” had not become generic and on 12 June 1996 adopted Regulation 1107/1996 by which ‘Feta’ was registered as a PDO.

- Following objections by Germany, Denmark and the UK to the Commission's decision on 15 October 1999, the Commission sent the Member States a questionnaire on the manufacture and consumption of cheeses known as “feta” and on how well known that name was amongst consumers in each of the States.
- The information received in response to that questionnaire was presented to the Scientific Committee, which gave its unanimous opinion on 24 April 2001 that the name “FETA” was not generic in nature.
- On 14 October 2002, the Commission adopted a regulation under which the name “ΦΕΤΑ” (“FETA”) was once again registered as a PDO.

Joined Cases C-465/02 and C-466/02

Germany v Commission (Agriculture)

[2005] ECR I-9115, [2006] ETMR 16

- The ECJ noted that the Commission had based itself on the Greek legislation governing the matter required that the milk used for the manufacture of “feta” must come exclusively from the regions of Macedonia, Thrace, Epirus, Thessaly, Central Greece, Peloponnese and the department of Lesbos and which excluded the island of Crete and the archipelagos, of Sporades, the Cyclades, the Dodecanese Islands and the Ionian Islands.
- The geographical area was defined by reference, *inter alia*, to geomorphology (mountainous or semi-mountainous nature of the terrain); climate (mild winters, hot summers and a great deal of sunshine); and to botanical characteristics (the typical vegetation of the Balkan medium mountain range). The Court took this into account in deciding that the area in question in the case was not determined in an artificial manner.

- The information provided to the Court indicated that the majority of consumers in Greece considered that the name “feta” carries a geographical and not a generic connotation, whereas in Denmark the majority of consumers believed the name to be generic.
- However, the evidence adduced to the Court of usage in Member States other than Greece, was that feta was commonly marketed with labels referring to Greek cultural traditions and civilisation, from which the Court said that it was legitimate to infer that consumers in those Member States perceived feta as a cheese associated with the Hellenic Republic, even if in reality it has been produced in another Member State.
- The Court ruled that those various factors relating to the consumption of feta in the Member States tended to indicate that the name “feta” was **not generic** in nature.

Case C-343/07, Bavaria and Bavaria Italia

[2009] ECR I-5491.

- it was argued that the name “BAYERISCHE BIER” was a ‘generic name’ because of the national application since 1906 of the Law on beer purity of 1516 (‘Reinheitsgebot’) and the international spread of the Bavarian bottom-fermentation brewing method in the course of the 19th century.
- It was also argued that the word ‘Bayerisches’ or translations of it were used as synonyms for ‘beer’ in at least three Member States (Denmark, Sweden and Finland) and as synonyms for the Bavarian bottom-fermentation brewing method in names, trade marks and labels of commercial companies the world over, including in Germany.

- The ECJ did not consider that the evidence established genericity.
- As regards a PGI, “a name becomes generic only if the direct link between, on the one hand, the geographical origin of the product and, on the other hand, a specific quality of that product, its reputation or another characteristic of the product, attributable to that origin, has disappeared, and that the name does no more than describe a style or type of product.”
- In the present case, the Community institutions had found that the PGI “BAYERISCHES BIER” had not become generic and that the existence between 1960 and 1970 of the collective marks “BAYRISCH BIER” and “BAYERISCHES BIER” and of five different bilateral agreements relating to the protection of the name “BAYERISCHES BIER” as a geographical name, showed that that name had no generic character.

Case C-132/05 “Parmesan” [2008] ETMR 32.

- the ECJ ruled that Germany had failed to show that the name ‘Parmesan’ had become generic.
- The Court noted in a dictum that a geographical designation could, over time and through use, become a generic name in the sense that consumers cease to regard it as an indication of the geographical origin of the product, and come to regard it only as an indication of a certain type of product. “That shift in meaning occurred for instance in the case of the designations ‘Camembert’ and ‘Brie’.

Infringement

1. Registered names shall be protected against:
 - (a) any direct or indirect commercial use of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name, including when those products are used as an ingredient;
 - (b) any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’ or similar, including when those products are used as an ingredient;

Case C-87/97 Consorzio per la Tutela del Formaggio Gorgonzola v Käserei Champignon Hofmeister GmbH & Co. KG and Eduard Bracharz GmbH [1999] ECR I-1301.

- Was PDO “GORGNZOLA (ITALY)” infringed if the packaging of the cheese designated as “CAMBOZOLA” bore a clearly visible indication of the country of manufacture?
- ECJ ruled that since the product at issue is a soft blue cheese which was not dissimilar in appearance to Gorgonzola, it was reasonable to conclude that a protected name was evoked, “where the term used to designate that product ends in the same two syllables and contains the same number of syllables, with the result that the phonetic and visual similarity between the two terms is obvious.”

PDO & PGI Cases

- Gherkins case [2003] ETMR 3
 - Spreewald biological region of Germany particularly suited to cultivation of gherkins.
Also a political region
 - Spreewalder gherkin protected as PGI.
 - Defendant marketed gherkins and sold them as ‘Spreewalder Art’.
 - ECJ – registration of PGI a matter for the local authority.

Warsteiner case [2003] ETMR 6

- W Brauerei, used “W” TM for beer brewed at Paderborn 40 km from W
- Para 126(2) Markengesetz “GIs may not be used commercially for goods which do not come from the place, area, region..which they designate...if there is a risk of misleading...”
- Schutzverband argued W label was misleading.
- W argued customers did not regard W as a GI and that the Markengesetz was precluded by reg 2081/92
- ECJ- the reg did not preclude local legislation.

Relationship between trade marks and PDOs/PGIs

Article 14(1) Where a designation of origin or a geographical indication is registered under this Regulation, the registration of a trade mark the use of which would contravene Article 13(1) and which relates to a product of the same type shall be refused if the **application for registration of the trade mark is submitted **after** the date of submission of the registration application in respect of the designation of origin or the geographical indication to the Commission.**

Relationship between trade marks and PDOs/PGIs

14(2) a trade mark the use of which contravenes Article 13(1) which has been applied for, registered, or established by use if that possibility is provided for by the legislation concerned, in good faith within the territory of the Union, **before the date on which the application for protection of the designation of origin or geographical indication is submitted to the Commission**, may continue to be used and renewed for that product notwithstanding the registration of a designation of origin or geographical indication, provided that no grounds for its invalidity or revocation exist

In such cases, the use of the protected designation of origin or protected geographical indication shall be permitted as well as use of the relevant trade marks.

Anheuser Busch/Budvar: Example of Co-existence



The EU register of GI's creates a system of coexistence between GIs and prior-registered trademarks, support for which the EU bases on its interpretation of Article 24(5) of the TRIPS Agreement which provides that measures to protect GIs shall not prejudice eligibility or validity of a prior trademark, which the EU interprets as permitting the coexistence of both a GI and trademark.

Recognition of EU GIs outside the EU eg Prosecco



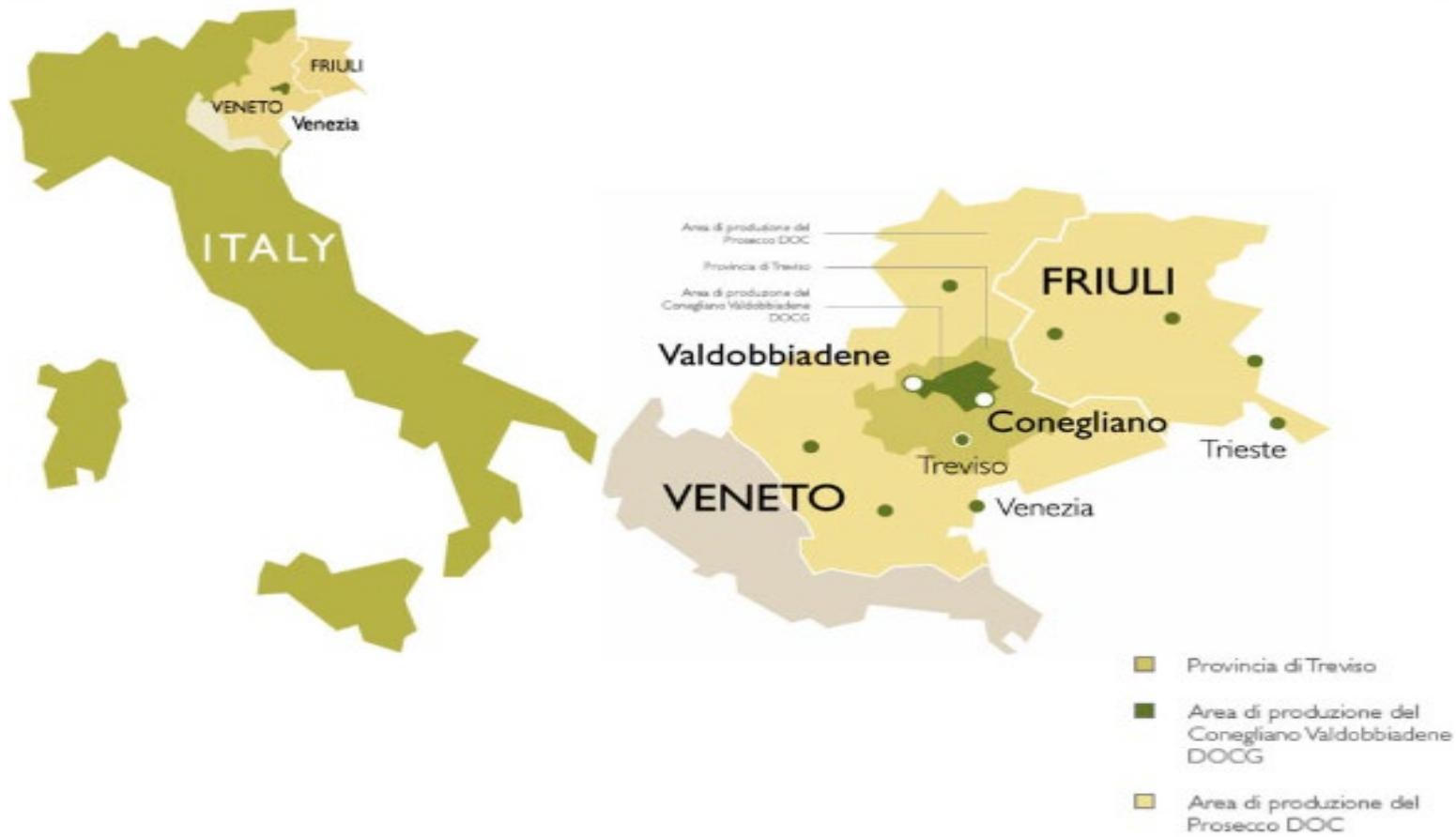
History

- The first known mention of the name "Prosecco" is attributed to the Englishman Fynes Moryson. Moryson, visiting the north of Italy in 1593, notes: "Histria is devided into Forum Julii, and Histria properly so called... Here growes the wine Pucinum, now called Prosecho, much celebrated by Pliny".[the Elder]



Conegliano Valdobbiadene

Prosecco DOCG



- In 2009, Italy expanded the boundaries of the geographical area for Prosecco to four Veneto provinces and five Friuli-Venezia Giulia provinces. Here is Prosecco protected as *Denominazione di Origine Controllata* (D.O.C.)

- Article 24(6) TRIPS, WTO members are under no obligation to protect as GI “products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.”
- 2010 submission of the Conegliano Valdobbiadene Consorzio to the UNESCO World Heritage list “The Prosecco vine has been cultivated on these hills for over two hundred years,”
- *The Prosecco Hills of Conegliano and Valdobbiadene.* (Le Colline del Prosecco di Conegliano e Valdobbiadene submission for the World Heritage List by the Permanent Delgation of Italy to UNESCO, 5 October 2010. Available at:
<http://whc.unesco.org/?cid=326&l=en&id=5566&&&action=doc> .

Bilateral agreements

- 2 June 2017 EU and China negotiated an agreement to recognize 100 GIs of each other.
- This includes the name Conegliano- Valdobbiadene-Prosecco.

EU launches new attack on Australia's use of "prosecco"

18/10/2017

As the European Union rebuilds post-Brexit, an old dispute has reared its head - Australian winemakers using the term "prosecco".

Italy has made clear during informal industry discussions ahead of negotiations for an Australian-European Union free-trade agreement that it wants a geographical indicator for prosecco.

The Winemakers' Federation of Australia successfully fought a 2013 attempt to register prosecco as a GI in Australia, which would have stopped local producers using the name.

Italy claims "prosecco" refers to the region around the Italian town Prosecco and not the grape variety.

However, prosecco was widely known as a grape variety until 2009, when Italy changed the varietal name to "glera" and claimed Prosecco as a European geographical indicator.

WFA chief executive Tony Battaglene has told [The Weekly Times](#) it's a "strategic move from the Italians", which it is also pursuing in other countries including China, Japan and Mexico.

Australian's prosecco industry is worth \$60million, with that figure expected to jump to \$200million in the next few years.

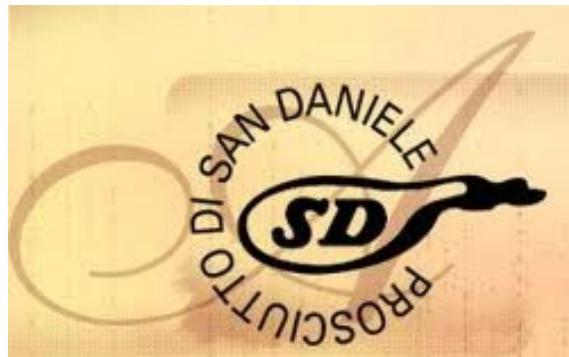
Ross Brown, from Brown Brothers, said: "It's quite a sleight of hand for the Italians to claim prosecco as a GI when for so long it's been a grape variety ... it's a commercial clawback opportunity."

EU GIs recognized overseas eg Brazil

SAN DANIELE

CONSORZIO DEL PROSCIUNTO DI SAN DANIELE

April, 04, 2009 – IG 980003



Italian GIs granted in Brazil

- **FRANCIACORTA**
- **CONSORCIO PER LA TUTELA DEL FRANCIACORTA**

October, 21, 2003 – IG 200101



Italian GIs pending in BPTO

- **PARMA** – CONSORZIO DEL PROSCIUTTO DI PARMA –
- **PADANA** – CONSORZIO PER LA TUTELA DEL FORMAGGIO GRANA PADANO –
- **CONEGLIANO** – CONSORCIO TUTELA VINO PROSECCO DI CONEGLIANO-VALDOBBIADENE

TRADITIONAL SPECIALITIES GUARANTEED



TRADITIONAL SPECIALITIES GUARANTEED

17. A scheme for traditional specialities guaranteed is established to safeguard traditional methods of production and recipes by helping producers of traditional product in marketing and communicating the value-adding attributes of their traditional recipes and products to consumers.

Article 18 Criteria

1. A name shall be eligible for registration as a traditional speciality guaranteed where it describes a specific product or foodstuff that:
 - (a) results from a mode of production, processing or composition corresponding to traditional practice for that product or foodstuff; or
 - (b) is produced from raw materials or ingredients that are those traditionally used.
2. For a name to be registered as a traditional speciality guaranteed, it shall:
 - (a) have been traditionally used to refer to the specific product; or
 - (b) identify the traditional character or specific character of the product

Article 18 Criteria

3. If it is demonstrated in the opposition procedure under Article 51 that the name is also used in another Member State or in a third country, in order to distinguish comparable products or products that share an identical or similar name, the decision on registration taken in accordance with Article 52(3) may provide that the name of the traditional speciality guaranteed is to be accompanied by the claim 'made following the tradition of' immediately followed by the name of a country or a region thereof.
4. A name may not be registered if it refers only to claims of a general nature used for a set of products, or to claims provided for by particular Union legislation.

Article 19 Product Specification

1. A traditional speciality guaranteed shall comply with a specification which shall comprise:
 - (a) the name proposed for registration, in the appropriate language versions;
 - (b) a description of the product including its main physical, chemical, microbiological or organoleptic characteristics, showing the product's specific character;
 - (c) a description of the production method that the producers must follow, including, where appropriate, the nature and characteristics of the raw materials or ingredients used, and the method by which the product is prepared; and
 - (d) the key elements establishing the product's traditional character.



This work was completed on behalf of the European Food Information Resource (EuroFIR) Consortium and funded under the EU 6th Framework Food Quality and Safety thematic priority. Contract FOOD – CT – 2005-513944.



Synthesis report No 6: Traditional Foods in Europe

Dr. Elisabeth Weichselbaum
and Bridget Benelam
British Nutrition Foundation

Dr. Helena Soares Costa
National Institute of Health (INSA), Portugal





Study of Traditional Foods in Greece



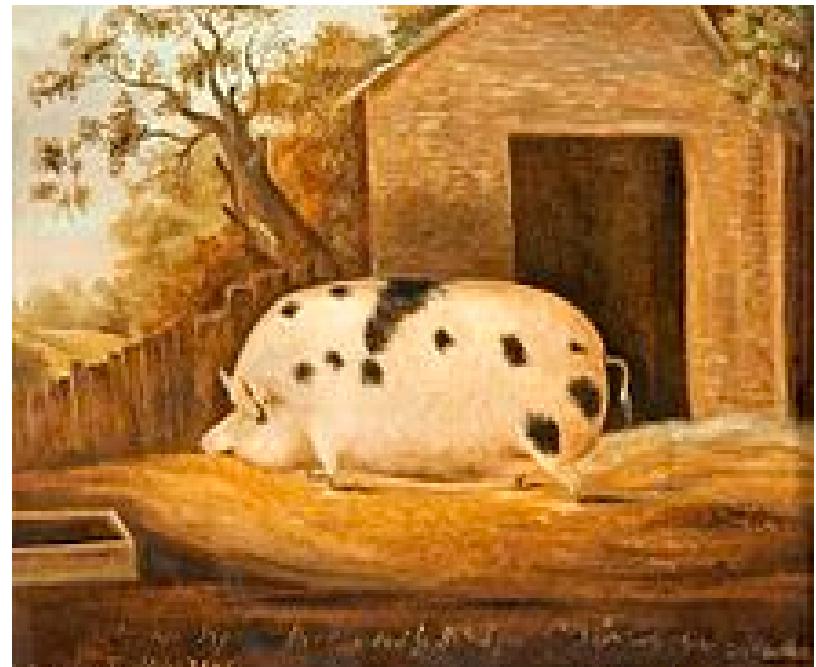
- Health aspects
- Cultural aspects
- Economical aspects



Traditionally Farmed Gloucestershire Old Spots Pork'

GOS only pig to have TSG appellation

Gloucestershire Old Spot by John Miles, 1834 in the Gloucester City Museum



Commission Regulation (EU) No 675/2010 of 28 July 2010
entering a name in the register of traditional specialities guaranteed
(Traditionally Farmed Gloucestershire Old Spots Pork (TSG))

F e e d - The definition of 'Traditionally Farmed' is that the pigs have been reared from birth to slaughter in an environment that enables them to grow at a natural rate. As a result, Daily Live Weight Gain (DLWG) is reduced and the number of days to slaughter is increased. To achieve this, a lower protein feed (15- 18 % protein with essential Fatty Acids including Lysine) supplemented as necessary with fruit and vegetables, sugarbeet pulp etc. is fed from weaning to finishing in such a managed way so as to avoid excessive backfat levels. GOS pigs managed in such a way should produce backfat levels of 12-16 mm measured at P2. Commercially raised pigs would normally be fed on a mix of between 18 and 22 % protein and be expected to have lower backfat levels of 5-8 mm.

Polish MEADS: półtorak, dwójniak, trójniak, czwórniak.



- Registered by regulation (CE) n° 729/2008 of 28 July 2008.
- Names cover specific character and historically established composition of meads: proportion of honey and water used

Półtorak, dwójniak, trójniak, czwórniak

- The history of their production dates back to the beginnings of Poland's statehood. In **966** the Spanish diplomat, merchant and traveller, Abraham Ibn Jacob, wrote:
- *“Beside the abundance of food, meat and land for ploughing, the country of Mieszko I abounds in mead, which is how the Slavic wines and intoxicating drinks are called”*

Pierekaczewnik



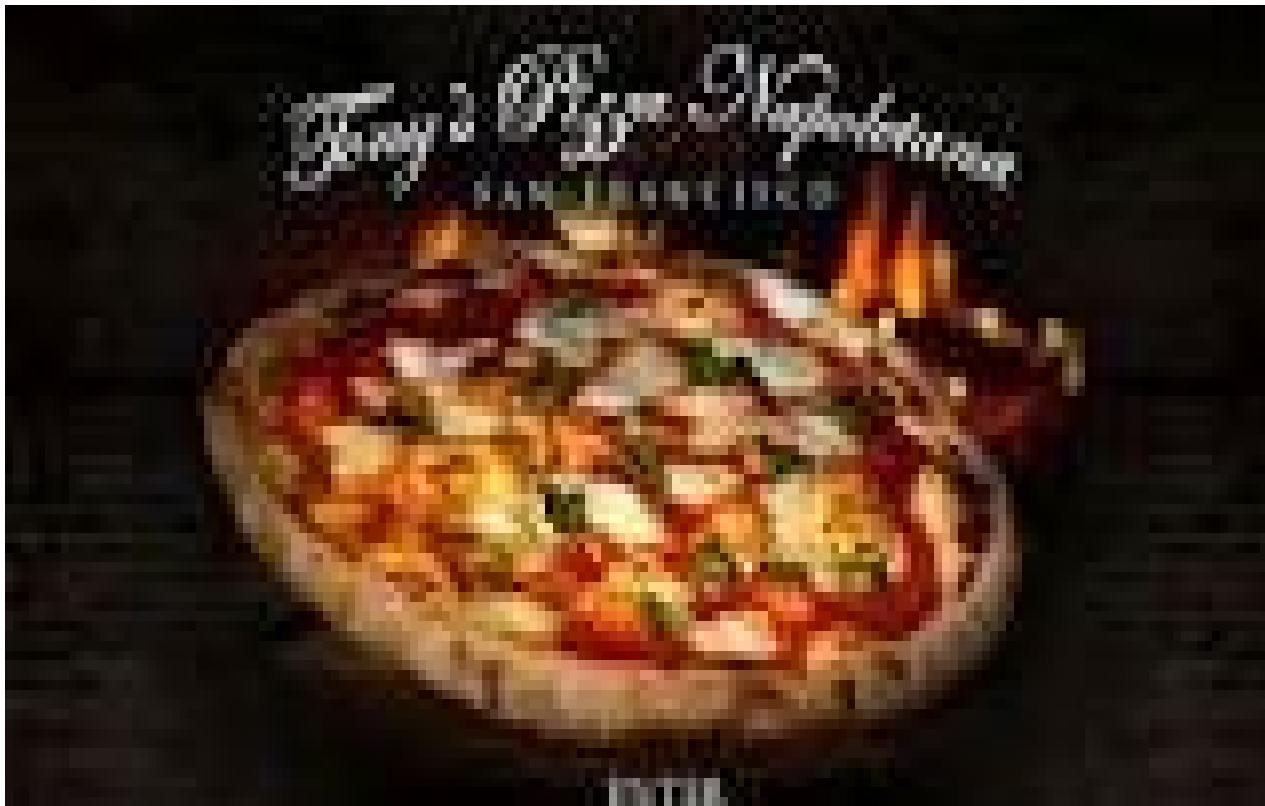
- First published in the OJ C of 25 September 2008
- Name *pierekaczewnik* comes from the verb *pierekatywat'*, which in Belarusian and Russian means to roll up.

Pierekaczewnik



- It derives from the territory of the former borderlands of the Republic of Poland, inhabited by Tatars and comes from the Tatar cuisine.
- The *pierekaczewnik* has a characteristic structure of very thin layers of pastry and a specific shape and size resembling a snail.

Commission Regulation (EU) No 97/2010 of 4 February 2010
entering a name in the register of traditional specialities guaranteed [Pizza
Napoletana (TSG)]



3.8. Traditional character of the agricultural product or foodstuff

The first appearance of the ‘Pizza Napoletana’ may be dated back to the period between 1715 and 1725. Vincenzo Corrado, a native of the town of Oria, and chief cook for Prince Emanuele di Francavilla, in a treatise on the foodstuffs most commonly used in Naples, stated that the tomato was used to season pizza and macaroni, thereby associating two products which have been the source of Naples's fame and the reason for its inclusion in the history of gastronomy. This quotation marks the official birth of the ‘Pizza Napoletana’, a disc of dough seasoned with tomato.

A great number of historical documents attest to the Neapolitan origin of this culinary speciality. The writer Franco Salerno claimed that this product was one of the greatest inventions of Neapolitan cooking.

Even Italian-language dictionaries and the encyclopaedia Treccani expressly mention the ‘Pizza Napoletana’. The expression ‘Pizza Napoletana’ is also quoted in numerous literary texts.

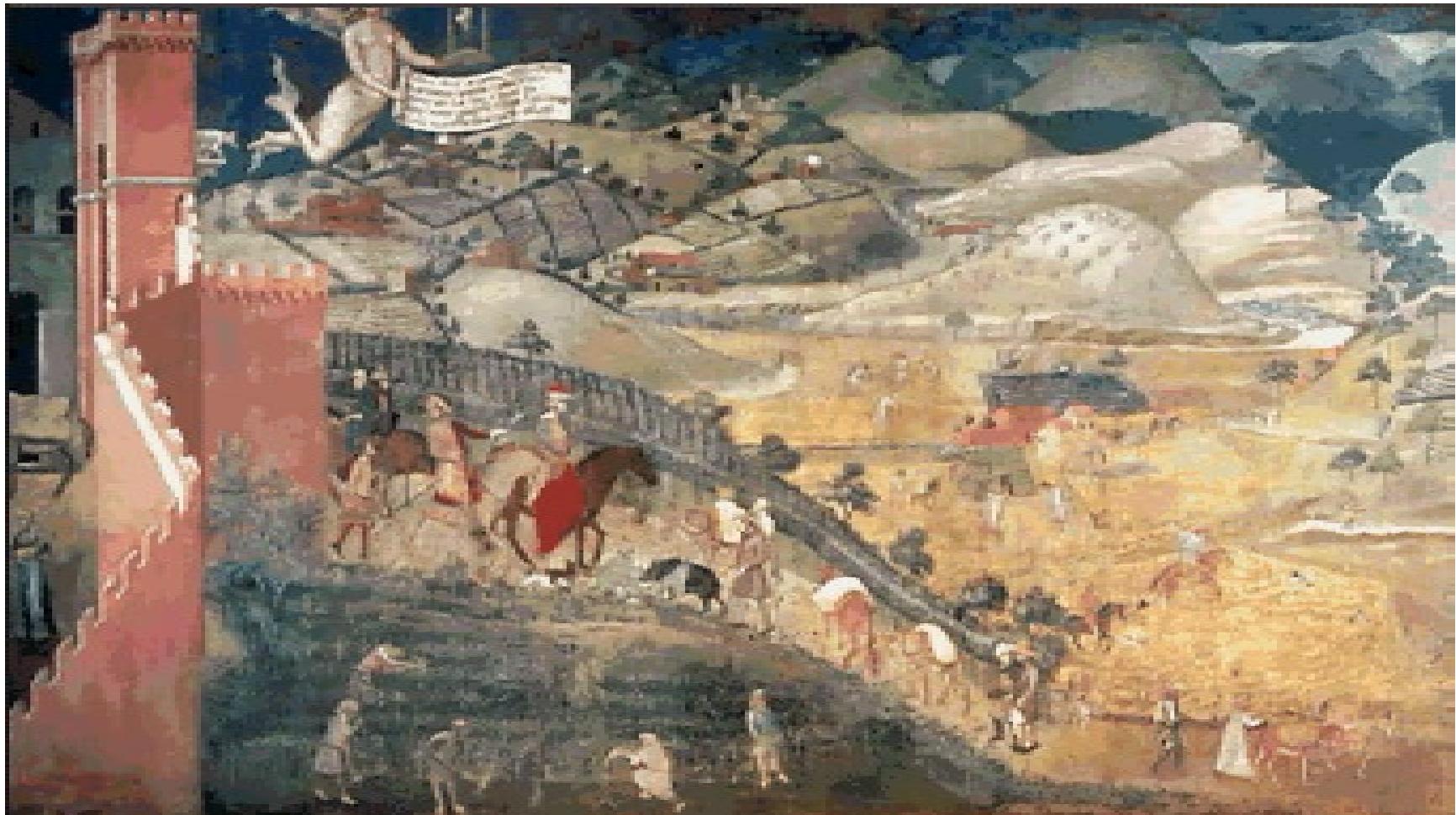
Council Regulation (EC) No 510/2006

'CINTA SENESE' [PGI] [Hog Meat]

The protected designation of origin 'Cinta Senese' is used exclusively to designate the meat of pigs of the cinta senese breed reared in the wild or semi-wild that are the offspring of pigs both of which are registered in the population register and/or the Herdbook of the genetic type 'Cinta Senese'.

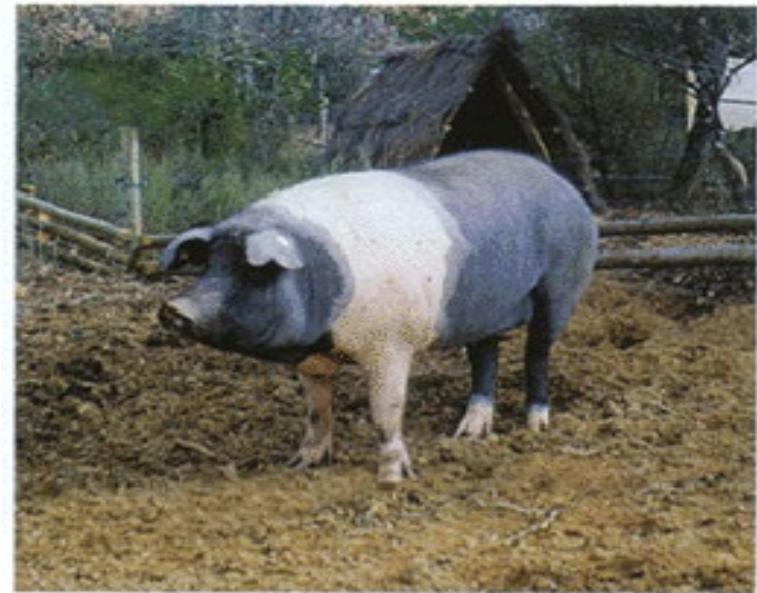
Geographical area: The production area includes the whole territory of the region of Tuscany up to a height of 1 200 metres above sea level; above this altitude the environmental conditions are not suitable for production.

GI Applicants Must Show Proof of “Traditionality”



A. Lorenzetti, The consequences of good ruling, Siena Municipal Palace, 1333

Cinta Senese Hog Meat



OPTIONAL QUALITY TERMS

- Article 27 A scheme for optional quality terms is established in order to facilitate the communication within the internal market of the value-adding characteristics or attributes of agricultural products by the producers thereof.
- *Article 28* Member States may maintain national rules on optional quality terms which are not covered by this Regulation, provided that such rules comply with Union law.

Article 29 Criteria

1. Optional quality terms shall satisfy the following criteria:
 - (a) the term relates to a characteristic of one or more categories of products, or to a farming or processing attribute which applies in specific areas;
 - (b) the use of the term adds value to the product as compared to products of a similar type; and
 - (c) the term has a European dimension

Article 29 Criteria

2. Optional quality terms that describe technical product qualities with the purpose of putting into effect compulsory marketing standards and are not intended to inform consumers about those product qualities shall be excluded from this scheme.
3. Optional quality terms shall exclude optional reserved terms which support and complement specific marketing standards determined on a sectoral or product category basis.

Article 31 Mountain Product

1. The term ‘mountain product’ is established as an optional quality term.

This term shall only be used to describe products intended for human consumption listed in Annex I to the Treaty in respect of which:

- (a) both the raw materials and the feedstuffs for farm animals come essentially from mountain areas;
- (b) in the case of processed products, the processing also takes place in mountain areas.

Recital 45

- (In order to provide mountain producers with an effective tool to better market their product and to reduce the actual risks of consumer confusion as to the mountain provenance of products in the market place, provision should be made for the definition at Union level of an optional quality term for mountain products. The definition of mountain areas should build on the general classification criteria employed to identify a mountain area in Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (1).

Criminal proceedings against Jacques Pistre (C-321/94), Michèle Barthes (C-322/94), Yves Milhau (C-323/94) and Didier Oberti (C-324/94) [1997] ECR p. I-2343.

- concerned a number of criminal prosecutions under French legislation which sought to protect the designation “MOUNTAIN” for agricultural products.
- The ECJ ruled that domestic legislation which prescribed conditions governing the use, for agricultural products and foodstuffs, of the description “mountain”, could not be regarded as covering a designation of origin or a geographical indication within the meaning of Regulation No 2081/92.
- The description ‘mountain’ was quite general in character and transcended national frontiers, whereas, according to Article 2 of Regulation No 2081/92, a direct link must exist between the quality or characteristics of the product and its specific geographical origin.

European
Commission

JRC SCIENTIFIC AND POLICY REPORTS

Labelling of agricultural and food products of mountain farming

Authors

Fabien Santini, Fatmir Guri, Sergio Gomez y Paloma

2013



Product of Island Fishing

No later than 4 January 2014 the Commission shall present a report to the European Parliament and to the Council on the case for a new term, ‘product of island farming’. The term may only be used to describe the products intended for human consumption that are listed in Annex I to the Treaty the raw materials of which come from islands. In addition, for the term to be applied to processed products, processing must also take place on islands in cases where this substantially affects the particular characteristics of the final product.

That report shall, if necessary, be accompanied by appropriate legislative proposals to reserve an optional quality term ‘product of island farming’.



European
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THE EU SINGLE MARKET

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Public consultation on a possible extension of
geographical indication protection of the European
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Study on geographical indications protection for non-agricultural products in the internal market

Final report – 18 February 2013

 Italy

Alabaster in Voleterra

Art furniture of the Bassa Pianura Veronese

Bassanese Artistic Furniture

Botticino Classico Marble

Carrara Marble

Ceramics of Faenza

Cremona Violinmaking

Deruta artistic and traditional ceramics

Murano Glass

Vietri sul Mare artistic and traditional ceramics

Jewels from Torre del Greco

Germany

"Solingen" cutting equipment

Cuckoo Clock made in Black Forest

Erzgebirge wood art

Idar-Oberstein Gemstone products

Oberammergau wood carvings

Vogtland Music Instruments

 Spain

- Elche shoes
- Jet of Asturias
- Majorca cloth or textile
- Manises ceramics
- Marble from Macael
- Nativity Set of Murcia
- Natural Stone form Castile and Leon-Pinacal
- Portillo Traditional Pottery
- Pottery and Ceramics of La Rambla
- Pottery of Salvatierra de los Barros
- Talavera Ceramics
- Taramundi knives and pocket knives
- Totana Ceramics
- Ubrique Leather



Embroidery of Madeira (GI nº 6)

Madeira Embroidery, Tapestry and
Crafts Institute



Bobbin Lace Embroidery

of Vila do Conde

(GI nº 135)

Association for the
Protection of Crafts and
Heritage of Vila do Conde



Figures of Barcelos (GI nº 137)

Municipal Council of Barcelos



Lover's Handkerchiefs of Minho (GI nº 164)

Association for Regional
Development in Minho



Black Ceramics of Bisalhães **(GI nº 145)**

Business Association - NERVIR

THE PROTECTION OF GEOGRAPHICAL INDICATIONS

'The Protection Of Geographical Indications offers a much-needed and comprehensive analysis of GIs and looks, in particular, at their legal treatment in the international context, under European laws, and in the United Kingdom. In this context, the author offers a detailed discussion of the history of GI protection along with a comprehensive breakdown of the current issues and possible future developments, including with respect to the enforcement of GI protection. This detailed analysis makes this book a complete and well-rounded resource for the study of GIs in a contemporary and comparative context, and offers important insights into this complex topic both for specialists and novices. The book also masterfully blends theoretical analysis and practical considerations on the topic. The author has to be commended for conceiving this well-designed and thorough book on a topic whose importance is destined to continue to grow in future years.'

Irene Calboli, Professor of Law, Marquette University Law School and Visiting Professor, Faculty of Law, National University of Singapore

Key features of this comprehensive book include:

- First volume to examine the 2012 European regulation on quality schemes for agricultural products and foodstuffs
- Scrutinises the proposed amendments to the Community Trade Marks Regulation on certification marks
- Uniquely considers the 2013 Customs Regulation.
- Offers the most up to date Practitioner book that considers the 2012 changes to geographical indications law.

The Protection Of Geographical Indications examines, from a practitioner's perspective, the European laws concerning the protection of geographical indications and geographical trade marks. The book expertly annotates the 2012 European regulation on quality schemes for agricultural products and foodstuffs, the proposed amendments to the Community Trade Marks Regulation on certification marks and the new Customs Regulation which deals with the counterfeiting of geographical indications.

Offering a clear and concise analysis of the updates to European laws that are concerned with geographical indications, this detailed discussion will be an important resource for legal practitioners at all levels. Students and academics concerned with legal studies, as well as agricultural policy and development economics, will also find much of value in the extensive volume.

Michael Blakeneys is Winthrop Professor at The University of Western Australia and Visiting Professor in Intellectual Property Law at Queen Mary University, London, UK.

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THE PROTECTION OF
GEOGRAPHICAL INDICATIONS

MICHAEL BLAKENEY



THE PROTECTION OF GEOGRAPHICAL INDICATIONS

LAW AND PRACTICE

MICHAEL BLAKENEY



ELGAR INTELLECTUAL PROPERTY LAW AND PRACTICE