CHAPTER 16

LEGAL PROTECTION OF MEDITERRANEAN PRODUCTS

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The legitimacy of a mark referring to a *terroir*[1], or local area, depends on the relationship of trust between consumers and producers. There is no objective proof attesting to the authenticity of a particular know-how. Historical depth depends on temporal and spatial awareness. A relationship of trust crystallises in the name or mark used to designate a product. Marks acquire legitimacy on the basis of the reputation of a product or *terroir*, which is built on know-how and history relating to practices. The values of cultural, symbolic and commercial usage that have been built up over time in specific places depend on subjective relationships. Economists refer to these types of attribute as "credence goods", since consumers cannot verify their features (Valceschini and Blanchemanche, 2003).

Supported either by the public authorities or by private actors, quality marks are strictly voluntary: displaying a logo or benefiting from an official mark does not mean that a product is exempted from the primary stage of meeting fundamental health requirements, which is compulsory for any product that is marketed. Health requirements are imposed according to the health rules in force at the national and international level (CIHEAM and EFSA, 2007), and operators who skip this statutory threshold quality stage are liable to penalty.

Distinctive quality is thus complementary to the statutory threshold quality; from the legal point of view it is not a precondition for marketing a product (CIHEAM, 2007). However, certain practices become norms that cannot be ignored, particularly in the case of the marketing standards introduced by the large-scale retail trade, which is in a position to impose quality standards on its suppliers such as GlobalGAP (Good Agricultural Practices) or IFS (International Food Standard) norms. These private voluntary standards, which are intended to reassure consumers, formalise the stages of the value

1 - As stated by UNESCO, the French word "terroir" is difficult or even impossible to translate. To cite UNESCO's definition, it is a determined geographical area, defined by a human community, which generates and accumulates along its history a set of distinctive cultural traits, knowledge and practices based on a system of interactions between the natural environment and human factors. The know-how involved carries originality, confers its typical nature, and enables recognition of the goods and services originating from this specific geographical area and thus of the people living within it. These areas are living and innovative spaces, which are more than just about tradition. – T.N.

chain by means of specifications. Third-party certifying bodies and monitoring procedures guarantee that these private standards, which actually function as world market norms, are complied with. Agro-food companies which conform with these norms bear the economic costs involved.

Quality marks are economic, political, cultural organisational and identity-related issues, and in this context they are regarded as symptomatic indicators of the spread of the marketing model of well-known origin and quality brands. Ranges of distinctive marks are built up and economic strategies go hand-in-hand with legal strategies. Marks develop as the result of competition and are a factor that complicates the ranking of the brands of products placed on the market (Henson and Humphrey, 2010).

The present paper, which combines a historical and critical approach, examines the circumstances in which these quality and origin marks emerge and spread. Multi-actor initiatives based on private or public standards rely on the economic reasoning of differentiation and market segmentation. Distinctive marks are attractive in terms of possible competitive advantages and the asset of protecting market positioning, since they bestow an exclusive title, which excludes competition. Distinctive marks are governed and managed by administrations, the guardians of doctrine, and have been the subject of compromise throughout their history. France and Europe are the bedrock of designations of origin designed to guarantee the protection of brands that are reputed for their producers' practical know-how. *Roquefort* and *Parmesan* are emblematic of these leading trade names, which are protected against imitations by national law. Since the early 1990s, there have been shifts in meaning and practice between protection through intellectual property rights and quality control procedures.

Analysis of European policies and the policies of the southern Mediterranean countries shows that legal tools and efforts to comply with the corpus of global trade rules have been developing as the result of the spread of the origin and quality model. The ability to modify standards and to steer the direction of their development is a challenge raised by international competition.

The history of institutional compromises

At the beginning of the 20th century: designations of origin – a compromise constructed by the food-chain actors

There is a wealth of historical, anthropological, economic and legal literature relating the circumstances in which designations of origin originated in France – theses, books and research programmes attest to the historical originality of this movement. Anthropological studies underline how these designations have been constructed (Marchenay and Bérard, 2005), and research conducted in the context of the Dolphin and Syner-gi programmes has emphasised the specific governance models that are characteristic of these marks. It was in France at the beginning of the 20th century, following a series of economic crises, that the wine-growing sector organised with a view to obtaining recognition of the legitimate origin of a *terroir* or local-speciality product through legislation. After 30 years of conflict, revolts and lawsuits, the *Société*

des viticulteurs de France (French wine-growers' association) vested itself with the organisational means for fighting imitations and enforcing the boundaries of an area that give a wine its special features. After the first law in 1905, which authorised the administrative zoning of production areas, the legislative decree of 30 July 1935 was the first piece of legislation to confer the status of Controlled Designation of Origin.

The social compromise concerns the fact that exclusion is determined by the delimitation of rights, which are evaluated according to the description of practices laid down in specifications that are negotiated at length by the stakeholders. The fact that the criteria of the product brand are connected with a *terroir* or local area "comprising both natural and human factors" makes it impossible to transfer these rights, since the right is assigned with the ownership of the land or with the right to farm the land. A designation of origin is an inalienable collective right (no sale, no licence). Customs, traditions and a geographical delimitation are laid down in specifications which are registered by the public authorities (Pollaud-Dulian, 1999). Products are differentiated according to qualitative organoleptic parameters, the production process, social history and area of origin. The ability to organise plays a key role in both the attribution and the registration of the designation, which requires a high level of collective organisation and is the result of a social compromise that is supported by regulations attesting to the connections between *terroirs* and natural and human factors. Furthermore, it is a mark which guarantees consumers the origin of production and the natural and human features on which the product's reputation is based. The fraud control authorities can thus intervene if a third party usurps the name.

In economic terms, this right confers a marketing monopoly for an indefinite period, since it is linked to the use of the name of the evolutive community of right holders (the State grants the right to successive producers). The producers who hold this exclusive right are protected from competition and at the same time work as one body to defend this intellectual property. In order to preserve market power they can set a price higher than the competitive price if necessary. Since there is no obstacle to trade and the rights are clearly defined, the allocation of resources is effective in theory and contributes to enhancing prosperity in general (Coase, 1960). The economic reasoning is based in theory on a reward within the framework of market rules and general well-being. Of course, in order to encourage the market as a whole, the reward must not develop into an illegitimate economic rent.

In political and social terms the State is theoretically neutral: it guarantees that this arrangement is based on a normative foundation. The social compromises are internalised in ways of thinking and acting which secure recognition of the rights. But, with globalisation, the hard-won rights and advantages that have been acquired in the course of the history of the sector at the national level lose their legitimacy unless they are recognised at the world level.

In the second half of the 20th century: internationalisation of protection (WTO-compatible)

Once the collective references have been stabilised at the domestic level, the will to obtain international protection of the designation of origin presupposes that the rules be transposed into wider frameworks. The acceptance of principles, norms, rules and

procedures (such as the definition or construction of an effective registration system and the practical implementation of a globalised anti-fraud police force) is a lengthy process which necessarily involves formalising the arguments that are put forward in working groups and special committees and at multinational conferences. These bodies become in turn arenas where collective preferences are developed and interpreted. The will to construct a globalised architecture results in a legal and economic mechanism, which is confronted with the complexity of legal options and sovereign choices. Negotiations are thus both technical and political.

The World Intellectual Property Organisation (WIPO) is the multilateral organisation which has been managing appellations of origin since 1958, the date when the Lisbon Agreement was signed: the Member States found a compromise on the definition and scope of protection including translations and additions ("form", "type", etc.). "An appellation of origin is the geographical designation of a country, an area or a city that designates a product that originates from that place and whose quality or specifications are linked totally or mainly with the geographical environment, including natural and human factors" (WIPO, 1958). This definition confirms the links between the designation of a product with specific qualities and features and a place in the systemic sense of the term (natural and human factors). It provides the opportunity to obtain protection for an appellation of origin amongst the contracting parties to the Lisbon Agreement through a unique registration procedure, while respecting national legal traditions. But the Lisbon Agreement is limited in scope due to the limited number of countries that have signed it and to the absence of legal sanctions in the event of usurpation. With its 26 signatory countries it is the legitimate framework at the international level for appellations of origin and geographical indications. Since there are no mechanisms for imposing sanctions, the feasibility of creating a multilateral register of geographical indications that would be managed under the auspices of the WIPO, as is the case with trademarks, is being evaluated at regular meetings (WIPO, 2008).

In order to enhance effectiveness, oversight of the international legal rules initially administered by the Intellectual Property Offices (the Lisbon Agreement is administered by the World Intellectual Property Organisation) was transferred to the GATT authorities in charge of trade rules. The major world powers are taking part in these new arrangements, in particular the United States and the European Union, which are seeking to guard against piracy at the international level. The objective is to acquire a more forceful protection system equipped with a monitoring facility and effective means of implementation by combining commercial and legal issues at the global level. It took 10 years of negotiations for the 'Dunkel Draft' to be drawn up at the conclusion of the 1994 Uruguay Round; it comprised an Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which also contained articles on "geographical indications".

It was no longer the 26 countries parties to the Lisbon Agreement – reduced to 16 if one subtracts the EU countries which adhered to it – but 54 States which signed the TRIPS Agreement. What is more, the agreement contains corrective procedures and action to effectively ensure that rights are respected. The States must make provision for procedures and measures as well as the penalties applicable in the event of deliberate

imitation of trademarks or brand names. In the establishment of legal machinery regulating intellectual property differentiated timescales apply in the member countries depending on their level of development. This legal and economic machinery is constructed in compliance with the fundamental principles of the World Trade Organisation, which are those of non-discrimination, national treatment, and equivalence. If the principles and rules are not complied with, "border measures" are adopted by the TRIPS Council, which is in charge of monitoring the implementation of the agreement and verifying that the States fulfil the obligations deriving from it. Last, but not least, in the event of conflict over compliance with obligations, a State can file a complaint with the Dispute Settlement Body. This system of order and sanctions is based on the codifications regulating the principles of the world market.

The multilateral framework of world trade establishes the regime of intellectual property rights relating to trade. The standard-setting doctrine of free trade is accompanied by the recognition of exclusive rights, which are administered through a corpus of legal rules including geographical indications. The new international definition given in Article 22 of the TRIPS Agreement is less stringent than that of the Lisbon Agreement: "Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin". The conditions for granting protection no longer depend on the combination of natural and human factors, since the article merely states cases which are substitutable (reputation, quality or other characteristic). The geographical area proving the origin of the name is conceived in the broad sense, since it ranges from a "locality" to a "*terroir*" of a member country.

To put it plainly, a national territory can be assimilated to a *terroir*: "Ceylon tea", "Columbia coffee", or "Greek feta" are practical examples of the changes taking place as the result of compliance with the definition of the TRIPS Agreement. Since 2007, for instance, the European Union has agreed that the word "Feta" is to be reserved exclusively for producers from Greek regions, in accordance with the WTO definition. The British cheese "Yorkshire Feta" or the "Good ewe's-milk Feta" sold by Roquefort Société can no longer be marketed under these brand names. The advantage that Greece has been granted for using and referring to the word "Feta" is endorsed by legal arguments relating to the specific reputation and overtones suggested to consumers by this name (Greek verbal and figurative connotations).

States, which are guarantors of rights but also actors in economic growth, change the boundaries and levels of protection of products of repute. As both the judges and arbiters of regulatory frameworks, they are faced with conflictual policy choices and political decisions.

21st century: macro-economic bargaining and institutional rulings

The trial of strength between the European Union and the United States is symptomatic of the differences in opinion and the difficulties encountered in harmonising bodies of prescriptive rules on which compromises have been found at the national level. These

countries come up against the first point in the negotiating mandate laid down by the ministers of trade at the Doha Ministerial Conference in 2001: the establishment of a multilateral system for notifying and registering geographical indications is as yet unresolved. The European Union argues that the registration system should have binding legal effects in every member state in order to extend protection to the international level, whereas the United States envisages an information base with no legal effect. This American point of view is understandable for historical and cultural reasons: the law of geographical indications is codified in the Trademark Act (US CODE, 2010), which is enforced by the Patent and Trademark Office (PTO). The American certification marks and collective trademarks are regarded as geographical indications which meet the WTO standards without the need to establish any new codification. From the US point of view, any binding system would contradict the policy of free trade, would constitute over-regulation and would give rise to new procedures, new rules and new machinery, which would be costly and ineffective (Babcock and Clemens, 2004).

In the absence of multilateral progress regarding the notification and registration of geographical indications, the Dispute Settlement Body plays an increasingly important role and influences national policies. The complaint filed by the United States against the European Union in 1999 illustrates the head-on confrontation between the countries of the New and the Old World. The United States – the countries of the New World – considered that its national legislation met the world trade requirements of economic flexibility. The European Union was suspected of setting standards which would contradict the principle of free trade and would be disguised forms of protectionism. A panel of the WTO Dispute Settlement Body agreed with the complainants and, in 2006, obliged the European Union to change the EC Regulation on designations of origin of foodstuffs (EC Regulations No 2081/92 and 692/2003, amended by EC Regulation no 510/2006); this was followed by application rules in December 2006 (EC Regulation no. 1989/2006) in order to comply with the principles of reciprocity and equivalence prevailing in the WTO. As a result of this panel decision in practical terms, third-country producers are now entitled to register a geographical indication in the European Union. "Colombia coffee" was thus one of the first foreign geographical indications to be entered in the European register in 2007. Since then, the European administration in charge of registration has been processing numerous applications from third-country producers. It has also had to open its inspection structures to independent third-party bodies which are in a position to carry out assessments and controls and to recognise when trademarks and geographical indications can coexist (Ilbert and Petit, 2009).

This attack on Community regulations on designations of origin of foodstuffs actually targeted the historical institutional arrangements established in Europe. WTO guidelines and the rulings made by the WTO panels have led to the alignment of national legal machinery. The reforms that have been carried out by the INAO (the French national origin and quality institute) since 2006 are a practical example of current national transposition measures: control procedures by third-party bodies are now added to the traditional checks carried out by the food-chain professionals themselves and the applications for registration of national AOCs (controlled designations of origin). This results in multiple additional constraints for producers. The reform of legal and economic

machinery to make it "WTO-compatible" has shifted the balance in the social compromises that have been built up over the years.

Market asymmetry and power struggles

Competition for the status and power of reputation is asymmetrical, since the economic circumstances and legal statuses of the various countries are not conducive to equilibrium: countries such as the United States and the European Union, which have reputation goods to defend and which have protection systems, are strengthening their positions and confirming their comparative advantage, since they enjoy the attributes of wealth and power.

The Mediterranean countries of the European Union – the benchmark market for Geographical Indications

In the absence of an international registration system, the European Union with its population of almost 500 million distributed over 27 countries is the only market with an efficient registration system for geographical indications. By August 2011, the European Union had a total of 1032 registered geographical indications, not counting the 71 indications awaiting registration. The southern European countries predominate with 76% of the registered geographical indications. They account for 83% of the PDOs (Protected Designations of Origin), 71% of the PGIs (Protected Geographical Indications) and 22% of the TSGs (Traditional Specialities Guaranteed). The vast majority come from Italy (230 products), followed by France (184), Spain (150), Portugal (116) and Greece (88). Then there is Slovenia with 5 products and Cyprus with just one. The number of geographical indications almost doubled in the period from 2000 to 2011. The main products registered in the European Union by August 2011 were fruit and vegetables (27%), cheeses (20%), meat products (13%), meat (12%) and oils and fats (11%).

According to a survey on the value of PDO and PGI agricultural products which was presented to the EU Advisory Committee on Quality of Agricultural Products, the value of the PDO-PGI product market was estimated at €14.5 billion in 2008. As regards products other than wine, cheese accounts for almost 38.7% of that total, meat and meat products 25.7%, beer 16.3%, fruit and vegetables 6%, bakery products 5.1%, and olive oil 1.6%. This market is highly concentrated on the 5 Mediterranean countries of the European Union.

The Geographical Indications market accounts for slightly over 1% of the total food market in Europe as a whole but almost 3% in the southern countries. It has a high growth rate: over 5% per year during the 2000-2004 period, whereas food expenditure amounted to 1% on average. The 2010 survey – updated for the Advisory Committee – confirms these data and gives an estimated rate of increase of 2.8% for 2007 (Origin, 2011).

Quality and origin marks have been undeniably successful on the foodstuffs market. Although the market is limited, it is steadily growing and is unaffected by price volatility. For quality-marked products allow differentiation on export markets and generally have high demand elasticity compared to similar products, even though they are increasingly exposed to competition. The recent rapid development of labels such as the "organic"

Table 1 - Number of quality products officially recognised at the European level

Countries	PDO	PGI	TSG	Total
Austria	8	6	0	14
Belgium	3	5	5	13
Cyprus	0	1	0	1
Czech Republic	6	19	4	29
Denmark	0	3	0	3
Finland	3	1	3	7
France	82	102	0	184
Germany	32	54	0	86
Greece	65	23	0	88
Hungary	4	4	0	8
Ireland	1	3	0	4
Italy	163	85	2	250
Lithuania	0	0	1	1
Luxembourg	2	2	0	4
Netherlands	5	3	1	9
Poland	6	14	8	28
Portugal	58	58	0	116
Romania	0	0	0	0
Slovakia	0	7	2	9
Slovenia	1	1	3	5
Spain	79	68	3	150
Sweden	1	3	2	6
United Kingdom	16	19	2	37
Total	515	481	36	1032

Source: Qualigeo, updated on 31 August 2011.

label shows that official quality marks meet consumer expectations. Studies carried out in the European Union show that consumers are quite willing to pay more for distinctive products that are identifiable. Dairy farmers in the *Comté* cheese-producing region are paid 10% more for their milk compared to the price paid for ordinary milk (Colinet *et al.*, 2006). French cheeses that are protected by a geographical indication fetch 2 euros

more per kilo on average than other French cheeses (Barjolle, Réviron and Sylvander, 2007). Analyses show that these marks are tools for creating value as well as for area management and long-term economic development. Both farming activities and rural area and landscape management benefit from the establishment of a designation of origin. The origin and quality policy pursued through the "quality package" in the context of European agricultural policy strengthens the protection of PDOs and PGIs, particularly when the products are used as ingredients in processed foods. The report adopted by the Committee on Agriculture of the European Parliament also proposes that registration procedures be simplified (Commission of the European Communities, 2011).

A regulated market – the fight against "unfair" practices

The major downside of the success of reputation goods becomes apparent when it comes to protecting designations of origin on international markets. Usurpation is frequent and takes on various forms. Some firms deliberately mislead consumers by taking over the entire brand name of a designation, distorting the brand name phonetically or using it to create Internet domain fields based on the name. In other cases the imitation is indirect and takes advantage of what a picture evokes – a champagne bottle is engraved on home cinema loudspeakers, for example, or a «House of Cognac» sells clothes. The means of the INAO in France are too limited for the institute to be equal to the task it has been assigned. With a budget of only €240,000 committed to fighting international counterfeits (Clerc, 2011), cases of fraud are multiplying and firms are vesting themselves with their own legal departments in order to contend with the problem. This is the case in particular with *Champagne*, *Roquefort*, or *Cognac*, for which dozens or even hundreds of cases of fraud are reported every year (over 1000 cases have been handled for *Cognac* in the last five years according to our enquiries with the operators).

In Italy, the Nomisma research centre has carried out a survey to assess the imitation of Italian agro-food products on the retail market in the United States (Fondazione Qualivita, 2007). The analysis identified 36,177 Italian-sounding products, of which only 3849, i.e. 10% of the total, are actually Italian. Italian-sounding products have an estimated value of $17.7 billion, only 8.6% of which ($1.5 billion) are genuinely Italian products. The study, which covers various types of distinctive mark (PDO, GI), Italian geographical place names, Italian proper nouns or Italian words, classes products according to 7 types of imitation.

The cheese sector is no doubt the sector most exposed to counterfeit. A recent study by Coldiretti states that *parmigiano reggiano* is the most falsified product in the world: it becomes *regianito* in Argentina, *parmesão in Brazil, parmesano* in Latin America, and *parmesan* throughout the world. A website survey highlights the fact that imitations are to be found on the virtual storefronts of the most renowned American firms. Gorgonzola, asiago and la fontina cheeses are produced, for example, by Stella Cheese in Illinois; the commercial firm of BelGioioso, in Wisconsin, also offers parmesan, provolone, pecorino romano and American grana, a cheese the same shape as *Grana Padano*. The list continues with numerous examples of products with most original descriptions and presentations: "ricotta with milk" – as if it were possible to produce cheese without it! Firms invent Italian-sounding names (BelGioioso, Colonna, Frigo, Stella, Sorrento...) or play on references to the history of immigration and even on Italy's green-white-red national

Table 2 – Forms of usurpation of Italian products on the United States market

Model	Type	Examples of imitation
Imitation of Italian GIs	Imitation of protected designation	Parmesan, Romano Cheese, Chianti, Provolone, Mortadella
	Reference to Italian geographical areas	Tuscan, Florence, Neapolitan, Genovese
	Use of the word Italia and its derivatives	Italia, Italy, Italiano, italian
Imitation of Italian products and brands	Italian product, not listed in the American dictionary	Gelato, pane, mascarpone, pomodori
	Italian product listed in the American dictionary	Pizza, pasta, caffé, ricotta
	Use of Italian surnames and first names	Alberto's, Capuzzo, Di Lallo
	Use of Italian words	Sole, amore, capitano

Source: Fondation Qualivita.

colours. It is only afterwards that one discovers that the firm is part of a foreign multinational and has nothing to do with Italian tradition.[2] There are also counterfeits in the prepared meat product sector: mortadella, soppressata or speck (smoked ham). Some countries allow products such as "Parma ham" produced by Maple Leaf Consumer Foods and "San Daniele" ham produced by Santa Maria Foods to be marketed.[3]

Working through a company, Buonitalia, the Italian Ministry of Agriculture has set up an observatory with the collaboration of the Institute for Foreign Trade with a view to monitoring North American markets and has also created an electronic platform (http://www.trueitalianfood.it), where new cases of piracy of Italian PDO and PGI products can be reported. A support service is provided for producer groups where infringement lawsuits are called for, as in the case of Parma and San Daniele ham and Asiago, Montasio, Taleggio and Provolone Val Padana cheese.

In view of the costs incurred in legal proceedings, producers form associations in order to strengthen the protection systems. Origin, an association which groups about 100 producers of origin and quality products throughout the world, plays a key role in efforts to ensure that national GI protection is extended and strengthened. The Association lobbies the WTO and the EU and, for the last five years, has been fighting for measures

2 - Cf. http://www.belgioioso.com; http://www.sorrentocheese.com/; http://www.colonnabrothers.com
3 - Cf. http://www.santamariafoods.ca/; http://www.mapleleaffoods.com

to strengthen the binding international register and to simplify registration applications as well as for the recognition of *ex officio* rights. It is pressing for action to strengthen the protection provided for geographical indications through international standards to combat unfair trading practices which damage their reputation.

Furthermore, the European Union is developing reciprocal protection agreements with a view to promoting the convergence of protection rules and systems. The trade agreements and cooperation agreements signed with the southern and eastern Mediterranean countries contain specific paragraphs on intellectual property rights: geographical indications are one of the components of the Association programmes concluded with the European Union (Berlottier, 2009).

Lastly, in May 2011 the European Commission adopted a strategy to reintroduce customs controls in order to combat trade in goods that contravene intellectual property rights. A new proposal for a regulation is to be put forward. In the absence of the implementation of the WTO agreement on intellectual property rights or the Lisbon Agreement, the European Union is seeking to include new rules conducive to backing up actions for damages in the event of infringement of the geographical indications cited in the Anti-Counterfeiting Trade Agreement (ACTA). The latter agreement grants new implementing powers and includes the criminal and civil liability of infringers.

Southern and eastern Mediterranean countries achieve compliance

Since the beginning of the 1990s, the southern and eastern Mediterranean States have been creating national machinery in line with the standards that have been constructed by high-tech countries. The legal protection of originating brands is a preliminary which strengthens the institutional fabric: the bilateral trade agreements signed with the United States and the European Union comprise a chapter on intellectual property rights containing definitions and specifying how protection systems are to be implemented. Algeria, Egypt, Morocco, Turkey and Tunisia have set up national machinery for protecting distinctive marks including a special section on geographical indications. Other countries such as Lebanon, Jordan, or Syria are working on national regulations, which have not yet been endorsed. By creating the Arab Society for Geographical Indications in 2008, the 24 countries of the Arab League have demonstrated the political will to encourage the passing of laws in alignment with international standards in order to gain competitiveness on world markets (CIHEAM, 2008).

This legal machinery is guided by governments which are bringing their regulations into line with global standards in order to meet the requirements for access to international markets: marks, geographical indications, labels and prestige-enhancing statements are being established by the national authorities. It is thus a top-down process which governs the acquiring of protection rights, the guiding principle being competitiveness.

Creating national legal machinery will not suffice, however, to guarantee the viability of the right at the national and international level. The southern and eastern Mediterranean countries lack monitoring machinery at the domestic level, and the institutions do not have the means of guaranteeing that the rights that have been granted comply with the

The quality approach in Morocco – boosting exports and fighting piracy

Morocco, on the southern shore, has embarked on a course of action to promote and diversify agricultural products as a lever for rural development and a means of boosting exports. The country has now opted for a labelling system as a priority approach in the context of the new strategy set forth in the government's Green Plan, and more specifically in the context of the second pillar of that plan.

The three official marks

The "Law on distinctive origin and quality marks for agro-foodstuffs", which was adopted on 23 January 2006 (Act 25/06) and entered into force in 2008, classes the products concerned in 3 categories: animal products, plant products, and processed products derived from the first two categories. The Act defines three "official" marks, i.e. geographical indication (GI), designation of origin (DO) and agricultural label (AL). It also lays down the requirements for the recognition and protection of these marks, stipulates how certified products must be labelled, and specifies what constitutes an infringement as well as the penalties applying in the event of non-compliance with the statutory provisions. Furthermore, it contains provisions for creating a national commission on distinctive marks. Each of these marks has its own logo, which a national committee within the Department of Agriculture is in charge of allocating to products that have been recognised. These "official" marks are a guarantee of origin and quality both for the domestic market and for foreign outlets; they serve the dual purpose of boosting exports and also guarding against counterfeits bearing labels of origin.

Recognised products

A total of 11 products have been recognised or are awaiting recognition to date:.the "Argan" IG from the Sous Massa Drâa region, which has been registered by the Moroccan Association of the Argan Oil GI; the "Tyout-Chiadma" olive oil PDO from the Marrakesh Tansift el Haouz region, registered by the Tyout Olive Oil Production and Marketing Cooperative; the "Berkane Clementine" GI from the Oriental Region, registered by the Berkane Clementine PGI Association; the "Taliouine Saffron" PDO from the Sous Massa Drâa Region, registered by the Sous Massa Drâa Regional Council; the "Tafilet majoul dates" PGI from the Meknes Tafilalet Region, registered by the Tafilet Oasis Association for Promoting Terroir Products and Organic Farming; the "100-day lamb" Agricultural Label registered by the National Association of Sheep and Goat Farmers; the "Béni Guil lamb" GI from the Oriental Region, registered by the National Association of Sheep and Goat Farmers; the "Sefri Ouled Abdellah pomegranate" GI from the Tadla Azilal Region, registered by the Abdliya Association for the Production and Marketing of Ouled Abdellah Pomegranates; the "Aït Baâmran prickly pear" GI from the Souss Massa Drâa Region, registered by the Cactus Aït Baâmran Economic Interest Grouping (EIG); the "Chefchaouen goat's cheese" GI from the Tangier-Tetouan Region, registered by the National Association of Sheep and Goat Farmers; the "Kélâat m'gouna-Dadès rose" PDO from the Souss Massa Drâa Region, registered by the Ouarzazate Regional Agricultural Development Office. Following the law and its implementing regulations, one of the major lines of the new export support strategy is to build up a visual identity conveying the "Moroccan Product" brand image for the main categories of Moroccan products intended for export but also to convey that image on the domestic market and thus encourage Moroccan consumers to develop a sense of pride.

specifications. In Turkey, applications are submitted by regional administrations, chambers of trade and industry, district governors' offices, or even private enterprises. The simplified registration procedure has certainly played a role in the multiplication of the number

of geographical indications, but since there are no control or monitoring procedures the quality of products sold under a brand name can vary widely, depending on the operators marketing them (Tekelioğlu, 2010). Outside Turkey, access to the market of the European Union – the only major market with an effective register that can protect geographical indications – is difficult. The situation to date is that Turkey applied in 2010 to have a product entered in the EU register – the *Antep Baklavası* (sweet pastry from Gaziantep). And in October 2010 Morocco applied to have *Argane* (Moroccan argan oil) registred. This geographical indication has been meeting with legal difficulties connected with the rights of prior users of the brands. Negotiations are underway to find possibilities of performance in return. The absence of prior reciprocal agreements is slowing down the practical implementation of recognition on the European register. Unlike China, which has negotiated a pilot project with the European Union (the "10+10" project) with a view to encouraging reciprocal applications for the protection of 10 geographical indications in the partner's jurisdiction, the southern and eastern Mediterranean countries do not constitute a sufficient market for reputed European brands such as *Roquefort*, *Comté*, *Grana Padano*, or *Parma Ham* to gain from being protected on their markets in return for the registration of Argan oil on the European market.

As is the case in the construction of rights and the organisation and coordination of inter-trade bodies, market differentials are undermining domestic protection and slowing down access for the southern and eastern Mediterranean countries to international recognition.

Outlook and conclusions

The need to protect reputation goods is combined with the political will to supply public goods such as rural and regional development, the protection of biodiversity and heritage, measures to highlight the know-how and products of specific areas, social responsibility and food security. As relays and vectors of these changes, geographical indications become both market tools (for combating counterfeit products) and levers in the political, economic, social and environmental context.

In parallel with national policies geared to protecting emblematic products, regional authorities and public research and cooperation bodies are studying the feasibility of creating an umbrella brand, which would cover the geographical indications of the countries around the Mediterranean. This approach is based on a strategy for mobilising the resources and competencies of small firms that are established in the area of activity and are seeking to differentiate specific products protected by geographical indications. In a competitive market that is steered by very large firms, the umbrella brand would be a means of acquiring a critical size in order to enhance visibility and efficiency. This approach, which is based mainly on the principle of aggregation, is generally adopted by the regions, as is the case with the *Sud de France* (South of France) or *Pays Cathare* (Cathar Region) brands. Certain regions in the southern countries are planning to create a Mediterranean label on the *Arc Latin* scale (see Box below).

The advantage on the Mediterranean scale would be to build up significant volumes of products while investing in promotion and in innovative firms in order to enhance the region's competitiveness. The main drawback of this regional marketing approach lies

in the difficulty in administering brands whose implementation criteria are subject to national rules and in the difficulty in finding modes of coordination which guarantee a stable reputation (Ilbert and Rastoin, 2010).

The contribution of the Novagrimed project to the debate on the creation of a Mediterranean label

The Novagrimed project (*Innovations Agricoles en Territoires Méditerranéens* – Agricultural Innovation in Mediterranean Regions) is part of the Mediterranean strand of the European structural policy for the 2007-2013 planning period. Its purpose is to implement concrete, innovative and collective measures which highlight the specific features of Mediterranean agriculture on the basis of the experience of the various partners (Provence-Alpes-Côte d'Azur Region, Puglia Region, Region of Sardinia, Murcia Region, Thessaly Region, and the MAI-M of the CIHEAM). Through work on the *Mediterranean label* the project is considering the feasibility of a regional quality brand for the recognition of typical products.

Advantages

A Mediterranean label would bring both socio-economic advantages (better market insertion and creation of new outlets for firms, enhancement of product quality, a reliable product traceability system, improvement of producer incomes and of regional revenue) and sociocultural benefits (strengthening of social bonds, contribution to the regional emergence process, response to the demands and needs of growing urban populations, possibility for rural areas to retain their populations and thus maintain a dynamic and competitive rural fabric, development of new relationships of trust with consumers).

Disadvantages

However, disadvantages have also become apparent in the course of the debate: the fact that the label would overlap with other systems already in place at the European, national or regional level, the extreme diversity of products and food chains, actors and viewpoints, the diversity of institutional protection machinery and the ensuing difficulties in establishing governance at the level of the Mediterranean Basin as a whole, in conflict arbitration and in efforts to manage and promote the label.

From the operational point of view, a structure would need to be set up at regional or State level in order to ensure that the label is properly operated and protected, to coordinate the traditional actors in the various food chains and to undertake promotional measures to ensure that the initiative is not perceived as an umpteenth brand which would not resolve the concerns of food-chain actors and consumers.

The ability to meet these social expectations of quality, security, sustainability and transparency raises questions of choice in terms of redistribution (Pronk, 1997) and democratic dialogue. Some collective initiatives evidence modes of organisation that are based on collective learning, networks and exchange:

- short food chains (collective purchasing groups, citizens' movements, etc.) are forms of commerce which promote local markets and localised systems;
- direct sales networks (in which remote cooperatives are linked up, etc.) participate in globalised trade while escaping the monitoring culture established by distinctive marks;

- autonomous citizens' observatories provide technical information on quality and prices (consumer movements, etc.).
- Access to information and to networking activities is one of the cornerstones of this type of organisation. There are a number of potential avenues for consolidating this type of collective action.
- The first solution is to encourage autonomous networking in order to build up controlled and sustainable "supply and demand". Local or farmers' markets or solidarity networks are possible alternatives to the solutions designed exclusively for export markets.
- Citizens' responses are many and varied, and this can be encouraged through an exchange platform equipped with an internal evaluation system in order to guarantee confidence (such as the eBay model, which records the history of sellers' rankings).
- Lastly, another solution would be to limit the number of labels or brands in order to strengthen drives to serve the public weal. This latter proposal is certainly the most difficult to implement, as has been demonstrated by the Australian government's plan to ban branding and logos on cigarette packages: the legislative bill, which is to be discussed by the Australian Parliament at the end of 2011, could prejudice brand owners' rights. The government's decision to opt for public health could be described as a non-tariff barrier from the point of view of the WTO free trade rules (Origin, 2011). New compromises will thus have to be constructed…

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