



An introduction to the nature and protection of Geographical Indications and Designations of Origin in South Africa under the Agricultural Product Standards Act

A training handout prepared for the Department of Agriculture, Land Reform and Rural Development

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List of Abbreviations

Abbreviation	Full description
APSA	Agricultural Product Standards Act, 1990 (Act No. 119 of 1990)
CGA	Counterfeit Goods Act, 1997 (Act No. 37 of 1997)
DALRRD	Department of Agriculture, Land Reform and Rural Development
DFIES	Directorate Food Import and Export Services, DALRRD
DFSQA	Directorate Food Safety and Quality Assurance, DALRRD
DTIC	Department of Trade, Industry and Competition
EPA	Economic Partnership Agreement
EU	European Union
GI/GIs	Geographical Indication(s) and Designation(s) of Origin when collectively referred to in this handout
LPA	Liquor Products Act, 1989 (Act 60 of 1989)
MCC	Method Cap Classique
MMA	Merchandise Marks Act, 1941 (Act 17 of 1941)
PDO	Protected Designation of Origin
PGI	Protected Geographical Indication
QUID	Quantitative Ingredient Declarations
SACUM	Southern African Customs Union +Mozambique
SADC	Southern African Development Community
TMA	Trade Marks Act, 1993 (Act 194 of 1993)
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UK	United Kingdom of Great Britain
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation



1. Introduction

This handout has been prepared as part of the Project “Technical Assistance for the Support Programme to implementation of the European Union (EU) – Southern African Development Community (SADC) Economic Partnership Agreement (EPA) in South Africa”¹.

The purpose is to provide officials of the Department of Agriculture, Land Reform and Rural Development (DALRRD): Directorates – Food Safety and Quality Assurance (DFSQA) & Food Import and Export Services (DFIES) with a reference document as part of the training to be provided on the topic of the protection of geographical indications and designations of origin in South Africa.

In this handout where reference is collectively made to geographical indications and designations of origin, the GI/s acronym will be used. Where reference is made specifically addressing the one or the other, the full description will be used.

The handout will not address aspects related to the exercise of the functions of inspectors/assignees as mandated under the Agricultural Product Standards Act, 1990, (Act No. 119 of 1990) (APSA) as it is assumed that the inspectors/assignees are familiar with the exercise of their functions and duties under that Act. Having said that, the handout will demonstrate how these competencies relate to the protection of GIs under certain sections of the APSA read with the ‘Regulations relating to the protection of Geographical Indications and Designations of Origin used on Agricultural Products intended for sale in the Republic of South Africa’ issued under section 15 of the APSA (the GI Regulations) ².

The handout addresses the following topics:

- The nature of GIs as an autonomous form of intellectual property;
- Distinguishing GIs from trade marks;
- International legal commitments by South Africa to provide protection for GIs;
- The existing legal framework in South Africa of relevance to GIs for purposes of DALRRD; and
- The scope of the protection to be provided for GIs with reference to the applicable rules of use.



2. Substantive topics

2.1 Understanding the nature of GIs

2.1.1 The legal definition

According to the GI Regulations a **designation of origin** means the name that identifies an agricultural product –

- as originating in a specific region or place (locality), or in exceptional cases a specific country;
- whose specific quality or other characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and
- of which all the production steps take place in the defined geographical area³.

The GI Regulations define a **geographical indication** as a name that identifies an agricultural product –

- as originating in in a specific country or place (locality), or in exceptional cases a specific country;
- whose specific quality or other characteristics are essentially or exclusively due to its geographical origin; and
- of which at least one of the production steps takes place in the defined geographical area⁴.

Three distinct elements can be observed from the definitions namely:

- The product must be linked to/originate from a specific, identifiable locality;
- The product concerned must possess a particular quality, or other characteristic; and
- There must be a causal link ('essentially attributable') between the quality, or other characteristics of the product concerned and the locality from which the product originates.

These elements are demonstrated in *Figure 1* with reference to South African Rooibos GI:

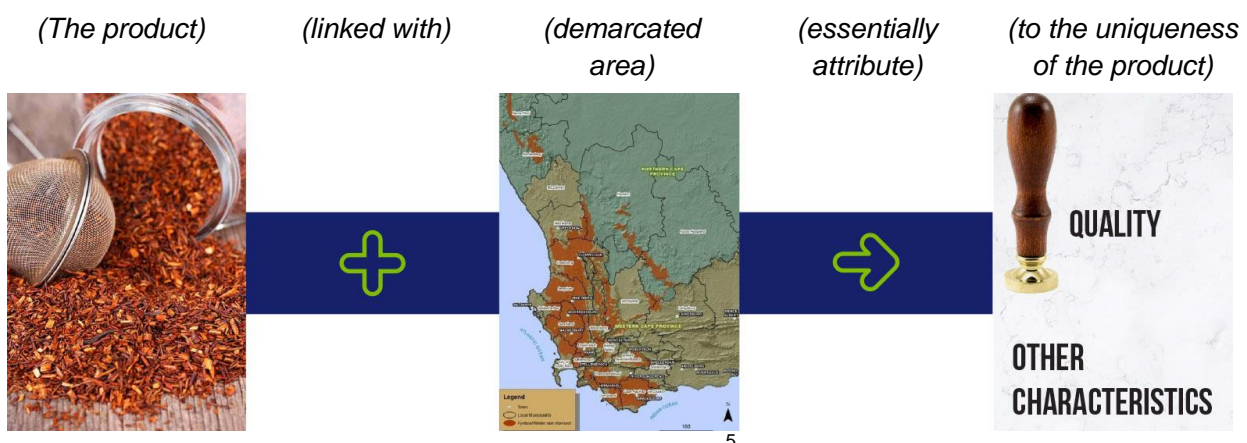


Figure 1: The required elements for a valid GI

Typically a distinction is made in the EU between Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs) (see *Figure 2a and b*⁶).



Figure 2a: PDO



Figure 2b: PGI

With the promulgation of the new GI Regulations on 10 February 2023, provision is now also made in South Africa for distinguishing between registered geographical indications and registered designations of origin (see *Figure 3a and b*⁷)



Figure 3a: Geographical Indication



Figure 3b: Designation of Origin

In the case of a designation of origin, the link is not only limited to the specific location, but also in relation to other factors within that specific locality i.e., the inherent natural and human factors (for example the production methods) contributing towards the characteristics of the product concerned.

Moreover, unlike a geographical indication, all steps of production, processing and preparation of the product concerned must take place within the specific locality. An example of a designation of origin for a cheese will require that both the milk from which the cheese is produced as well as the processing of the milk into cheese must take place within the specific locality.

In the case of a geographical indication at least one (but not necessarily all) of the stages of production, processing or preparation must take place in the specific location. For purposes of a cheese protected under a geographical indication of origin, this will allow the processors of cheese (within the specific locality) to source milk from which the cheese is produced from outside the specific locality and still benefit from a registered geographical indication.

2.1.2 What right does a GI confer?

A GI registration provides users within the defined geographical area with a collective right to use the GI logo on their products produced within that area, provided that the product is produced according to the prescribed product standards associated with the GI registration.

It also provides the holders with the right to prevent other non-qualifying producers/products i.e., the product is not produced in the designated area following the prescribed standards for the GI concerned or produced outside of the designated geographical area, from using the GI on those products and hence to 'free ride' on the reputation of the GI. It does not prevent however third parties from producing a product using the same techniques as set out the standards for that specific GI⁸. An example would be where sparkling wine can be produced according to the techniques (the 'traditional method') used in the production of Champagne. However, what is not allowed is for the producer of such product to use the

PDO designation 'Champagne' in respect of that product. South Africa uses the designation Method Cap Classique (MCC) for such wines.

2.1.3 What are the advantages of a registered GI?

A registered GI provides the right holders and consumers *inter alia* with the following benefits:

- Securing premiumisation of their products, which may result in higher prices being realised for producers;
- Strengthening the position of farmers/producers in the value chain;
- Protecting historical/traditional know-how associated with the production of the product;
- Creation of jobs within the value chain, which may extend beyond the producers of the product to also include support services such as packaging, transport, retail etc;
- Protection of consumers against misleading product imitations which are often of poorer quality; and
- Functioning as a vehicle for rural development, including the promotion of tourism^{9 10}.

The following statement by the European Court of Justice in the **Morbier** case¹¹ sets out the intention of a system of GI protection as follows:

“More generally, it is clear from the case-law of the Court that the system of protection of PDOs and PGIs is essentially intended to assure consumers that agricultural products bearing a registered name present, by reason of their origin from a specific geographical area, certain particular characteristics and, therefore, offer a guarantee of quality due to their geographical origin, with the aim of allowing agricultural operators who have made real qualitative efforts to obtain better income in return and to prevent third parties from drawing improperly taking advantage of the reputation deriving from the quality of those products”.

2.1.4 For what period is a registered GI valid and does it need to be renewed from time to time?

Unlike a trade mark or patent a GI, once registered, will remain valid for an indefinite period unless/until the registration is cancelled.

2.1.5 What is the difference between a GI and a trade mark?

- Both a trade mark and a GI fulfil a distinguishing function. According to the World Intellectual Property Organisation (WIPO) - “*geographical indications (GIs) identify a good as originating from a particular place. By contrast, a trademark identifies a good or service as originating from a particular company*”¹²;
- Any person complying with the product specifications producing the product from within the geographical area of a particular GI registration, can use the GI. Only the proprietor or a licenced user of a trade mark may use that trade mark;
- A trade mark can be licenced or assigned by the trade mark owner to any person or undertaking anywhere in the world. A GI on the other hand is restricted to a particular geographical area and can only be used by the rights holders producing the product within the geographical area¹³.

2.2 Why should South Africa protect GIs?

South Africa has made commitments or is in the process of committing to the protection of GIs of its trading partners at the multilateral, bilateral and regional levels.

2.2.1 Multilateral commitments

As a Member of the World Trade Organisation (WTO), South Africa is a party to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Under TRIPS South Africa is obliged to protect GIs from other WTO Members¹⁴.

ANNEX 1C

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

PART I	GENERAL PROVISIONS AND BASIC PRINCIPLES
PART II	STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS
	1. Copyright and Related Rights
	2. Trademarks
	3. Geographical Indications
	4. Industrial Designs
	5. Patents
	6. Layout-Designs (Topographies) of Integrated Circuits
	7. Protection of Undisclosed Information
	8. Control of Anti-Competitive Practices in Contractual Licences

2.2.2 Bilateral commitments

2.2.2.1 EU/SADC EPA Protocol 3

South Africa, together with other SACU Member States and Mozambique concluded in 2016 the EU/SADC Economic Partnership Agreement (EU/SADC EPA). Protocol 3 of the EU/SADC EPA provides for the mutual recognition and protection of GIs nominated for protection by South Africa and the EU.

PROTOCOL 3

Geographical indications and trade in wines and spirits

RECALLING the Agreement between the European Community and the Republic of South Africa on trade in wine signed at Paarl on 28 January 2002 and the Agreement between the European Community and the Republic of South Africa on trade in spirits signed at Paarl on 28 January 2002;

BEING PARTY TO the Agreement on Trade, Development and Cooperation Between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part signed in Pretoria on 11 October 1999, the Agreement in the Form of an Exchange of Letters providing for the provisional application of the Agreement between the European Community and the Republic of South Africa on trade in wine as from 28 January 2002, and the Agreement in the Form of an Exchange of Letters providing for the Provisional Application of the Agreement Between the European Community and the Republic of South Africa on Trade in Spirits as from 28 January 2002;

DESIRING to promote the development of GIs defined as indications which identify a good as originating in the territory of a Party, 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, within the meaning of Article 22(1) of the TRIPS Agreement;

ACKNOWLEDGING the importance to their economies of the beverages sector and the need to facilitate trade in wine products and spirits between them,

Article 1

Application of the Protocol

1. The provisions of this Protocol apply to South Africa and to the EU (the Parties).
2. Any other SADC EPA State may adhere to this Protocol in relation only to GIs by lodging an application with the Special Committee on GIs and trade in wines and spirits referred to in Article 13 of this Protocol (the Special Committee).
3. This Committee may submit proposals for amendments to the Joint Council for consideration and approval of the accession of the SADC EPA State concerned to this Protocol pursuant to Article 117 of this Agreement.

2.2.2.2 UK/SACUM EPA Protocol 3

Following Brexit SACU and Mozambique concluded the UK/SACUM Economic Partnership Agreement (UK/SACUM EPA) which allowed for a 'roll-over' of the provisions of the EU/SADC EPA, with its protocols into a separate Economic Partnership Agreement between these parties. The roll-over also included the provisions of Protocol 3 into a protocol¹⁵ subsisting now, on the same terms as Protocol 3, between South Africa and the United Kingdom. For purposes of this handout (i.e. relating to agricultural products and foodstuffs), the only GI of the UK is in respect of cheese namely 'White Stilton cheese/Blue Stilton cheese'¹⁶.

2.2.3 Regional commitments

South Africa is a signatory to the African Continental Free Trade Area Agreement. Once negotiations on the protocol providing for the protection of intellectual property, including GIs have been finalised and

accepted by South Africa, there will rest an additional legal commitment on South Africa to provide protection to GIs from other African countries.

None of these legal instruments are prescriptive as to the legal framework within which GIs should be protected. South Africa can use its available intellectual property legal framework, provided that the level of protection is provided as called for in these instruments. South Africa has opted to promulgate GI-specific legislation in the form of the GI Regulations allowing for the protection of GIs for agricultural products and foodstuffs. Moreover, it has provided protection to wines and spirits GIs through the Liquor Products Act (see paragraph 2.3.2 below). The next section will consider this in more detail.

2.3 How does South Africa provide for protection of GIs?

2.3.1 Agricultural Product Standards Act (Act No. 119 of 1990) (APSA)

The APSA affords protection to geographical names through Section 6A of the Act.

Under this provision the Minister responsible for Agriculture “*may by notice in the Government Gazette prohibit the use of specified geographical or other names, or terms in connection with the sale or export of a specified product, on such conditions as may be specified in such notice*”.

2.3.1.1 The GI Regulations made under the APSA

South Africa introduced GI-specific legislation in March 2019 with the promulgation of the GI Regulations under the APSA¹⁷. The date of entry into force was 23 September 2019, six months after publication in the Government Gazette. This regulation was subsequently replaced by the new GI Regulations promulgated on 10 February 2023.

The new GI Regulations allow for the registration and protection of South African as well as foreign GIs, including those that form part of an international agreement, such as the EPA.

The **Addendum** to this handout provides an update on the status of protection provided to EPA GIs under the APSA.

2.3.2 Other relevant legislation

Apart from the APSA, inclusive of the GI Regulations, several other pieces of legislation are available to provide protection to names designating origin. Except for the Liquor Products Act, which also falls under the remit of DALRRD, the other acts are administered and enforced by the Department of Trade, Industry and Competition (dtic).

2.3.2.1 The Liquor Products Act, 1989 (Act 60 of 1989) (LPA)

The LPA makes provision¹⁸ for the Minister responsible for agriculture to impose restrictions on the use of geographical names in connection with the sale or export of a particular liquor product.

South African GIs related to wine are regulated under the Wines of Origin System established under the LPA. EU GIs recognised for protection in Protocol 3 of the EU/SADC EPA are afforded GI protection under the provisions of the LPA¹⁹. At the time of writing this handout, EU GIs related to beer are still only protected as prohibited marks under the Merchandise Marks Act (see paragraph 2.3.2.2).

2.3.2.2 Merchandise Marks Act, 1941 (Act 17 of 1941), as amended

A GI in the form of a mark can benefit from protection under the MMA. Under Section 15 (1) of the MMA the Minister (i.e., the Minister of dtic) is empowered to prohibit the use of “*any mark, word, letter or figure*”

or any arrangement or combination thereof in connection with a trade mark, mark or trade description applied to goods". This he does by way of notice published in the Government Gazette.

According to government officials involved at the time of the negotiations of Protocol 3 of the EU/SADC EPA protection was provided to EU GIs (except for GIs related to wines and spirits – see paragraph 2.3.2.1) as prohibited marks under the MMA²⁰. The intention was that this would be a temporary arrangement pending the finalisation of the GI Regulations under the APSA and the registration of these GIs under those Regulations. Similarly, protection is afforded to both the names 'Rooibos'²¹ and 'Honeybush'²² under the MMA as prohibited marks. No similar protection is provided for the name 'Karoo Meat of Origin' under the MMA.

The unauthorised use of a prohibited mark protected under the MMA constitutes an act of counterfeiting for the purposes of the Counterfeit Goods Act, 1997 (Act No.37 of 1997) (CGA) and hence are subject to the provisions relating to the inspection and enforcement available under that Act.

2.3.2.3 Trade Marks Act, 1993 (Act 194 of 1993) (TMA)

A GI can be protected under the TMA as certification trade marks²³ or collective trade marks²⁴.

A **certification trade mark** is defined as a mark '*capable of distinguishing, in the course of trade, goods or services certified by any person in respect of ... geographical origin ... from goods or services not so certified*'. The proviso to this provision is that the person in whose name the certification trade mark is registered, is not allowed to trade in the goods or services in respect of which the registration is sought.

A set of rules is to accompany the application for the registration of a certification trade mark specifying the conditions for use of the certification mark, the circumstances in which the proprietor is to certify the goods or services and in respect of which characteristics of the goods or services the applicant will certify the goods or services²⁵. For example, the certification may relate to the geographical origin associated with conditions of use and/or the mode of production.

A **collective trade mark** is defined as a mark '*capable of distinguishing, in the course of trade, goods or services of persons who are members of any association from goods or services of persons who are not members thereof*²⁶. Unlike a certification trade mark, the association who owns the collective trade mark is allowed to trade in the goods or services in question. An application for registration of a collective trade mark shall be accompanied by a set of rules which shall specify the person authorised to the mark, the conditions of use of the mark as well as sanctions against misuse²⁷.

Inspection and enforcement of the protection afforded to these marks take place according to the relevant provisions of the CGA. This does not exclude the initiation of proceedings for infringement by the owner of a trade mark.

2.4 Scope of protection to be provided to GIs in South Africa

The purpose of this section of the handout is to familiarise inspectors/assignees with the scope of protection afforded to GIs in South Africa. It aims to provide an understanding of the rules provided for the use of these names to enable inspectors/assignees to enforce the protection afforded to them under the GI Regulations.

The GI Regulations provide assignees appointed under the APSA with the mandate to monitor and enforce compliance with the registered product specifications for a GI²⁸. Moreover, such assignees shall ensure the protection **in the trade** of all South African GIs, foreign GIs as well as registered foreign GIs that form part of international agreements, for example the EPA GIs. To accomplish this, they must ensure that these GIs enjoy the scope of protection as set out in sub-regulations 3(1) and (2) of the GI Regulations (see paragraph 2.4.4) by enforcing the rules of use as provided for in those sub-regulations

and to take the appropriate action against transgressors as permitted for under the APSA²⁹. This section of the handout will discuss the interpretation and application of these rules of use in practice.

The following statement³⁰ of the European Court of Justice in the *Scotch Whisky* case clarifies the aim of protecting GIs:

“[the aim of protection of GIs] is to prevent the misuse of protected geographical indications, not only in the interests of consumers, but also in the interests of producers who have striven to guarantee the qualities expected of products lawfully bearing such indications”.

2.4.1 The rules of use of GIs as provided for in the TRIPS as far as they relate to agricultural products and foodstuffs

South Africa is obligated under TRIPS to provide the legal means –

- to allow interested parties to prevent the **use of a GI in any manner that will mislead the public** as to the geographical origin of the good in respect of which the GI is used³¹; and
- to allow interested parties to prevent any use which constitutes an **act of unfair competition** within the meaning of Article 10bis of the Paris Convention (1967). Article 10bis requires from South Africa to provide effective protection against unfair competition. An act of unfair competition is defined as ‘*any act of competition that is contrary to honest practices in industrial and commercial matters*’³².

The protection allowed for under these provisions shall apply against a GI, even though literally true as to the territory, region or locality where the goods originate, falsely represents to the public that the goods originate in another territory³³.

TRIPS does not require from South Africa:

- To provide protection for a GI which has become generic in the description of a particular good or service³⁴. An example of a GI that has become ‘generic’ is the term ‘camembert’ for cheese. As noted by WIPO this name can now be used on any camembert-type cheese produced anywhere in the world. This is not to be confused with the French PDO Camembert de Normandie, for the cheese produced exclusively in Normandy, France³⁵; and
- To provide protection for a GI that is not protected or ceased to be protected in its country of origin, or which has fallen into disuse in that country³⁶.



The latter reason also serves as an imperative for South Africa to provide protection for South African GIs in its own territory. Without such protection provided, no other WTO Member is under an obligation to provide protection for South African GIs in their respective jurisdictions.

2.4.2 The rules of use of GIs as provided for in Protocol 3 of the EU/SADC EPA and the UK/SACUM EPA (EPA Protocol 3)

Article 5 (1) of Protocol 3 provides for the rules of use of GIs recognised and protected under the EU/SADC EPA as well as the UK/SACUM EPA (‘EPA GIs’). EPA GIs shall be protected against the practices listed and discussed below.

As was noted by the European Court of Justice in several cases involving the interpretation of provisions with similar wording to that found in Protocol 3, the prohibitions listed in Article 5(1) follows a 'gradual list of prohibited conduct'. Each of these prohibitions will now be considered in more detail mindful of the fact that similar wording is found in regulation 3 of the GI Regulations.

2.4.2.1 'Any direct or indirect commercial use'

"5.1. (a) any direct or indirect commercial use of a protected name:

- *for comparable products not compliant with the product specification of the protected name, or*
- *in so far as such use exploits the reputation of a geographical indication".*

The phrase 'any direct or indirect commercial use' has been interpreted in EU case law as referring to instances where the GI as registered is used as part of the disputing name.

In the **Scotch Whisky** case, the European Court of Justice referred with approval to the following statement made by the Advocate General in that case clarifying the meaning of the term 'use'³⁷ for purposes of this prohibition:

"the word 'use' in that provision requires, by definition, that the sign at issue make use of the protected geographical indication itself, in the form in which that indication was registered or, at least, in a form with such close links to it, in visual and/or phonetic terms, that the sign at issue clearly cannot be dissociated from it" [own emphasis added].

Similarly in paragraph 31 of the judgement, the Court concluded that –

"..., for a situation to be covered by Article 16(a) of Regulation No 110/2008 [like the wording used in Article 5 (1)(a) of Protocol 3], the sign at issue must use the registered geographical indication in an identical form or at least in a form that is phonetically and/or visually highly similar" [own emphasis added].

However, the quoted provision differentiates between direct and indirect use. Again the Court approved³⁸ of the following statement made by the Advocate General in the matter drawing a distinction between direct use (using the GI on the product itself) and indirect use (using the GI in 'supplementary sources'):

"In that connection, as the Advocate General has stated in point 30 of his Opinion, unlike 'direct' use, which implies that the protected geographical indication is affixed directly to the product concerned or its packaging, 'indirect' use requires the indication to feature in supplementary marketing or information sources, such as an advertisement for that product or documents relating to it" [own emphasis added].

2.4.2.2 'evocation'

"5(1)(b) any misuse, imitation or **evocation** including:

- *use in connection with an indication of the true origin of the product in question;*
- *use in translation, **transcription or transliteration**;*
- *use together with words such as 'kind', 'type', 'style', 'imitation', 'method', or similar words or expression³⁹" [own emphasis added].*

The prohibition against the **evocation** of a GI has given rise to a number of court judgements in the EU that could provide helpful guidance in the application of this concept.

The meaning of the term has been defined by the European Court of Justice in the **Queso Manchego** case⁴⁰ (as well as in other cases) in the following manner⁴¹:

“ that the decisive criterion for establishing whether an element evokes the registered name, within the meaning of Article 13(1)(b) of Regulation No 510/2006 [like the wording used in Article 5 (1)(a) of Protocol 3], is whether that *element is likely to recall directly to the mind of the consumer, as a reference image, the product benefiting from this name*”[own emphasis added].



Image by wirestock on Freepik

(a) Applying evocation to a disputed figurative sign

Applying this criteria to the case before it the Court ruled⁴² as follows in respect of figurative signs:

“Therefore, it cannot, in principle, be ruled out that figurative signs are capable of recalling directly to the mind of the consumer, as a reference image, the goods benefiting from a registered name because of their conceptual proximity to a such denomination.”

... and that consequently⁴³ –

Article 13(1)(b) of Regulation No 510/2006 must be interpreted as meaning that the *evocation of a registered name is capable of be produced by the use of figurative signs*” [own emphasis added].

The Court stipulated the approach to be taken in considering whether a figurative sign is capable of evoking a registered name by pointing to the following –

- There needs to be reliance on the presumed reaction of the consumer to establish a link between the elements in dispute and whether that link is “*sufficiently direct and unequivocal so that the consumer, in their presence, is led to have that name mainly in mind*”⁴⁴.
- In the case under consideration it needed to be established whether the figurative signs evoking the geographical area of La Mancha of which the name forms part of the designation of origin, and the registered designation⁴⁵.

To illustrate this approach, the Court noted that the PDO ‘queso manchego’ is linked to the geographical area of the La Mancha region⁴⁶.

The figurative signs at issue, included in particular, drawings of a character resembling Don Quijote de la Mancha, of a skinny horse and landscapes with windmills wind and sheep.

Applying the approach adopted by the Court, it indicated that the referring court (i.e., the referring court which approached the EU Court of Justice for a preliminary ruling on the matter) –

- needs to “establish whether there is a **sufficiently direct and unequivocal conceptual similarity** [‘proximity’⁴⁷] between the figurative signs at issue ... and the PDO ‘queso Manchego’⁴⁸[emphasis added] so that “the consumer will have directly in mind, as a reference image, the product benefiting from this PDO”⁴⁹.
- it may be necessary in making this assessment for the court a quo to “to take into consideration all the signs, figurative and verbal , which appear on the goods at issue in the main proceedings in order to carry out an overall examination taking into account all the elements with evocative potential”⁵⁰.

Hence the Court concluded that⁵¹ –

“In the light of the foregoing, Article 13(1)(b) of Regulation No 510/2006 must be interpreted as meaning that the use of figurative signs evoking the geographical area to which a designation of origin, referred to in Article 2(1)(a) of that regulation, is liable to constitute an evocation of it, including in the case where the said figurative signs are used by a producer established in this region, but whose products, similar or comparable to those protected by this designation of origin, are not covered by it”.

(b) Applying evocation to a disputed sign partly incorporating the registered designation of origin

In the **Champanillo** case, brought by the Champagne Wine Interprofessional Committee, the European Court of Justice found that for evocation to be present there is no need to demonstrate -

- “... that the product benefiting from a PDO and the product or service covered by the contested sign are identical or similar”⁵²;
- that the consumer is confused or misled by the disputed designation;
- that there is an intention or a fault, as the prohibition against ‘evocation’ constitutes an objective protective regime; and
- “the existence of a competitive relationship between the goods protected by the registered name and the goods or services for which the contested sign is used”⁵³.



Elaborating on the 'link' between the disputed designating and the PDO 'Champagne', the Court remarked⁵⁴ as follows:

"The existence of such a link may result from several elements, in particular, the partial incorporation of the protected designation, the phonetic and visual relationship between the two designations and the resulting similarity, and even in the absence of these elements, the conceptual similarity between the PDO and the denomination in question or even a similarity between the products covered by this same PDO and the products or services covered by this same denomination. In the context of that assessment, it is for the referring court to take account of all the relevant factors surrounding the use of the name in question".

(c) Evocation due to a visual and phonetic relationship between the disputed sign and GI

In applying the criteria whether or not there exist a 'visual and phonetic relationship' between the names **Verlados** and **Calvados** the European Court of Justice followed a syntactic approach⁵⁵:

"As regards the visual and phonetic relationship between the names 'Verlados' and 'Calvados', the referring court must take into account the fact that *they both contain eight letters, the last four of which are identical, and the same number of syllables, and that they share the suffix 'dos', which confers on them a certain visual and phonetic similarity*"[own emphasis added].

The Court provided the following guidance⁵⁶ to the referring court regarding the 'relevant consumer' for purposes of this assessment:

"... in order to assess whether the name 'Verlados' constitutes an 'evocation' within the meaning of that provision of the protected geographical indication 'Calvados' with respect to similar products, the referring court must take into consideration the phonetic and visual relationship between those names and any evidence that may show that such a relationship is not fortuitous, so as to ascertain whether, *when the average European consumer, reasonably well informed and reasonably observant and circumspect, is confronted with the name of a product, the image triggered in his mind is that of the product whose geographical indication is protected*"[own emphasis added] [own emphasis added].

(d) Evocation due to conceptual proximity between the disputed sign and the GI

The European Court of Justice had to consider among others a question regarding evocation under circumstances where the disputed sign/designation (**Glen Buchenbach**) did not incorporate part of the PGI (**Scotch Whisky**), nor presented any phonetic/visual relationship with the protected GI.

Hence it was necessary for the Court to consider in the absence of these elements, whether the element of **conceptual proximity** on its own could justify a finding that evocation has taken place.



Image on Freepik

The Court formulated the question to be answered by the referring court as follows⁵⁷:

*“ whether an average European consumer who is reasonably well informed and reasonably observant and circumspect thinks directly of the protected geographical indication, namely ‘**Scotch Whisky**’, when he is confronted with a comparable product bearing the disputed designation, in this case ‘**Glen**’, that court taking account, in the absence of (i) any phonetic and/or visual similarity between the disputed designation and the protected geographical indication and (ii) any partial incorporation of that indication in that designation, **of conceptual proximity between the protected geographical indication and the disputed designation**” [own emphasis added].*

Hence, the Court confirmed that absent any phonetic and/or visual similarity between the disputed designation and the protected geographical indication and any partial incorporation of that indication in that designation, the conceptual proximity between the disputed designation and the geographical indication can form the basis for evocation.

2.4.2.3 ‘Translation’, ‘Transcription’ or ‘Transliteration’

The Australian Department of Foreign Affairs and Trade provides the following helpful definitions:

A **translation** is the conversion of the word in one language to the same word in another language. For example, the translation of the Greek term, ‘Elia Kalamatas’, is ‘Kalamata Olives’.

A **transcription** is the conversion of the characters of one language to the characters of second language in accordance with the pronunciation of the second language. For example, the usual transliteration of Ελληνική Δημοκρατία (Hellenic Republic) is ‘Ellēniká, Dēmokratía’, while the transcription could be ‘elinikí dimokratía’.

Transliteration is when the characters in a word are transferred from one writing system to another writing system. For example, the transliteration of the Greek Ελιά Καλαμάτας, is ‘Elia Kalamatas’.

Source: <https://www.dfat.gov.au/trade/agreements/negotiations/aeufta/public-objections-gis/geographical-indications-frequently-asked-questions>

2.4.2.4 ‘Any other false or misleading indication’

(5)(1)(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of a like product, on the inner or outer packaging, advertising material or documents relating to that product, and the packing of the product in a container liable to convey a false impression as to its origin.

The relationship between Article 5(1)(c) and Article 5(1)(a) and (b) is summarised by the European Court of Justice in the *Scotch Whisky* case where the Court confirmed⁵⁸ that these provisions contains a **gradual list of prohibited conduct**:

“ ... Article 16 of Regulation No 110/2008 contains a **graduated list of prohibited conduct** in which point (c) of Article 16 must be distinguished from points (a) and (b) thereof. Point (a) of Article 16 is limited to use of the protected geographical indication and point (b) to misuse, imitation or evocation. Point (c), however, widens the scope of the protection to include ‘any other ... indication’ (in other words, information provided to consumers that is included on the description, presentation or labelling of the product concerned) which, **while not actually evoking the protected geographical indication, is ‘false or misleading’ as regards the links between the product concerned and that indication**”. [own emphasis added]

To be noted however is that the wording of Article 16(c) of Regulation No 110/2008 is somewhat different from the wording of Article 5(1)(c) of the EPA Protocol 3 in that it requires the false or misleading indication to be on the ‘*description, presentation or labelling of the product*’. The wording of the latter follows more closely that of the wording used in the Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality systems for agricultural products and foodstuffs⁵⁹. It is submitted however that the statement of the Court remains useful for the application of Article 5(1)(c).



This point of a graduated list of prohibited conduct was further explained⁶⁰ in the **Morbier** case where the European Court of Justice noted that Article 13(1)(c) of Regulation (EU) No 1151/2012 broadens, compared to paragraphs (a) and (b) of Article 13(1) (similar to Article 5(1)(a) and (b) of the EPA Protocol 3, the protected perimeter:

“As regards the conduct referred to in Articles 13(1)(c) of Regulations ^{Nos} 510/2006 and 1151/2012, it should be noted that these provisions **broaden, compared to points a) and b), of these articles, the protected perimeter**, by incorporating in particular “any other indication”, i.e. [that is to] say the information provided to consumers, which appears on the packaging or packaging of the product concerned, on advertising or on the documents relating to this product, which, **although not evocative of the protected geographical indication, are qualified as false or misleading with regard to the links of the product with the latter**”. [own emphasis added]

The Court further defined what the meaning is of the phrase ‘**any other indication**’ by noting⁶¹ -

“The expression “any other indication” includes **information which may appear in any form on the packaging or packaging of the product concerned, on advertising or on documents relating to this product, in particular in the form of a text**” [own emphasis added].

2.4.2.5 ‘Any other practice’

Article 5(1)(d) any other practice liable to mislead the consumer as to the true origin of a like product.

The aim of this sub-article as is apparent of the phrase ‘any other practice’ was confirmed by the Court in the **Morbier** case⁶² to be catch-all prohibition:

“... these aim to cover **any action which is not already covered** by the other provisions of the same articles and, thus, to close the system of protection of registered names” [own emphasis added].

(a) Reproduction of shape or appearance qualifies as ‘any other practice’

The question before the Court was whether ‘any other practice’ includes a prohibition against⁶³ –

“... the **reproduction of the shape or appearance characterizing a product** covered by a registered name when such reproduction is likely to mislead the consumer as to the true origin of the product” [own emphasis added].

The following observations made in the judgement informed the ruling that answered the question raised in the affirmative:

- The relevant practice must be likely to mislead the consumer;
- The prohibition does not specify the acts prohibited⁶⁴;
- Despite the fact that the protection afforded to GIs “is not intended to prohibit, in particular, the use of manufacturing techniques or the reproduction of one or more characteristics indicated in the specifications of a product covered by a registered name, on the grounds that they appear in these specifications, to make another product not covered by the registration”⁶⁵, “PDOs are [...] protected insofar as they designate a product which has certain qualities or certain characteristics. Thus, **the PDO and the product covered by it are intimately linked**” [own emphasis added]⁶⁶;
- This assessment will require the referring court to “refer to the perception of an average European consumer, normally informed and reasonably observant and circumspect” and secondly, “to take into account all the factors relevant to the case, including the **methods of presenting** to the public and **marketing** the products in question as well as **the factual context**” [own emphasis added]⁶⁷.

In applying these observations to the present matter, the Court described ‘Morbier’ cheese as having “a *horizontal central black stripe, welded and continuous over the entire slice*”⁶⁸, it being argued that this forms an ‘element of appearance’ of the product covered by the registered name.

In dealing with this aspect of an element of appearance the Court formulated the manner of assessment as follows⁶⁹ -

“whether that element constitutes **a reference and particularly distinctive characteristic of that product** so that its reproduction can, together with all the factors relevant to the case, lead the consumer to believe that the product containing this reproduction is a product covered by this registered name” [own emphasis added].

While recognising that South Africa is not bound by the rulings or interpretations handed down by the European Court of Justice, these judgements do provide helpful guidance to local inspectors/assignees in the enforcement of the scope of protection provided to GIs.

2.4.3 The rules of use of GIs as set out in Section 6A of the APSA

The prohibition against the use of specified geographical or other names provided for in Section 6A of the APSA (see paragraph 2.3.1) -

“shall also apply where the geographical name in question –

- (a) Is used in connection with an indication of the true origin of the product in question;*
- (b) Is used in translation; or*
- (c) Is used together with words such as “kind”, “type”, “style”, “imitation” or similar words or expressions”.*

Comment:

The wording of Section 6A is similar to those found in TRIPS relating to wines and spirits. Hence, following the example of the text provided for in the EPA Protocol 3, Section 6A extends the additional (higher) level of protection pertaining to wines and spirits under TRIPS also to apply to products falling under the scope of the APSA. This implies that no confusion is required in the mind of the consumer.

2.4.4 The rules of use of GIs registered in terms of the GI Regulations

Regulation 3 of the GI Regulations provides for the scope of protection/rules of use of GIs recognised and protected under these Regulations. GIs registered under these Regulations shall be protected against the following practices:

“3. (1) Any direct or indirect commercial use of a registered GI in the Republic of South Africa is prohibited on –

Comment:

As will be noted from the extract of the text of Regulation 3, it closely follows the wording used in Article 5(1)(a) the EPA Protocol 3. Note also the incorporation of the phrase ‘*any direct and indirect commercial use*’. Hence, the meaning ascribed to the phrase as discussed in paragraph 2.4.2.1. may provide guidance to inspectors/assignees in applying this provision.

(a) similar agricultural products which are not covered by the registration; and

Comment:

An example of sub-paragraph (a) is where a blue-veined cheese, not produced according the product specifications of the GI ‘Roquefort’ is used to described that cheese.

(b) dissimilar agricultural products where such use exploits the reputation of the protected name.

Comment:

An example of sub-paragraph (b) could be where a blue-veined ice-cream is marketed using the GI ‘Roquefort’.

(2) The prohibition referred to in sub-regulation (1) shall

(a) apply in particular where –

(i) the registered name is imitated or alluded to⁷⁰;

Comment:

Unlike Article 16(b) of EU Regulation 110/2008 and Article 5(1)(b) of Protocol 3 of the EPA, Regulation 3(2)(a)(i) uses the term ‘alluded’ instead of the term ‘evocation’. However, the two words are semantically similar. Hence, the discussion on the meaning ‘evocation’ in paragraph 2.4.2.2 may be useful in the enforcement of this provision.

(ii) the registered name is translated;

(iii) the registered name is accompanied by words or expressions such as “kind”, “type”, “style”, “imitation”, “method”, “as produced in”, or any similar words or expressions: **Provided that the use of these words or expressions together with the registered name is permissible when specifically allowed for in an international agreement** [emphasis added];

Comment:

The exception to sub-regulation (2)(a)(iii) may find application in the use of the GI ‘FETA’ as provided for in the EU/SADC EPA Protocol 3 where provision was made for a special dispensation in respect of the use of the Greek GI ‘FETA’⁷¹ together with the terms ‘South African Feta’, ‘Feta – Style’ and ‘Feta – Type’.

(iv) the agricultural product is used as an ingredient in the manufacture of another foodstuff, unless the conditions in regulation 19 have been met;

Comment:

Refer to paragraph 2.4.6.

(2) The prohibition referred to in sub-regulation (1) shall-

(b) also apply to --

(i) any false or misleading indication or depiction as to the agricultural product’s true origin, provenance, manufacturing process, nature or essential characteristics on a container, an outer container, a notice board or in an advertisement thereof;

Comment:

Note the incorporation of the phrase ‘any false or misleading indication’. Hence, the meaning ascribed to the phrase as discussed in paragraph 2.4.2.4. may provide guidance to inspectors/assignees in applying this provision.

(ii) any illicit use of a specific or unique shape of the agricultural product referred to in regulation 4(3)(b);

Comment:

Recall that the European Court of Justice in the **Morbier**-case found that “... the reproduction of the shape or appearance characterizing a product covered by a registered name when such reproduction is likely to mislead the consumer as to the true origin of the product” can constitute ‘any other practice’ liable to mislead the consumer as to the true origin of a like product. It is submitted that the phrase used in sub-regulation 3(2)(b)(ii) namely ‘any illicit use’, may be similar in application to the phrase ‘any other practice’. Hence, the discussion on the meaning ‘evocation’ in paragraph 2.4.2.5 may be useful in the enforcement of this provision.

(iii) any use of a container or packaging which could create a false impression regarding the origin of the agricultural product; and

Comment:

Recall that under EU law the packing of the product in a container liable to convey a false impression as to its origin constitutes an example of ‘any false or misleading indication’. Hence, the principles applied by the Court in the **Morbier** – case as discussed in paragraph 2.4.2.4. may provide guidance to inspectors/assignees in applying this provision.

(iv) any illicit use of a GI symbol, the designation “Protected Geographical Indication”/ “Protected Designation of Origin” or “Registered Geographical Indication”/ “Registered Designation of Origin” or

“Republic of South Africa Geographical Indication”/ “Republic of South Africa Designation of Origin” or “South African Geographical Indication”/ “South African Designation of Origin”, or the corresponding acronym “PGI”/ “PDO” or “RGI”/ “RDO” or “RSA-GI”/ “RSA-DO” or “SA-GI”/ “SA-DO”, or any similar designations or acronyms”.

2.4.5 The rules of use of GI protected products as ingredients in foodstuffs

The GI Regulations also regulate the use of GI-protected products as ingredients in other products. The prohibition against the direct or indirect use of a registered GI under the conditions provided for in Regulation 3(1) shall apply where:

“(iv) the agricultural product [benefiting from the registered GI] is used as an ingredient in the manufacture of another foodstuff, unless the conditions in regulation 19 have been met”⁷².

Regulation 19 provides that –

(1) A name registered as a South African GI, South African designation of origin, foreign GI or foreign designation of origin including a registered foreign GI or foreign designation of origin

that forms part of an international agreement [such as the EU and UK GIs recognised and protected under the EPA Protocol 3], may be indicated as part of or in close proximity to the product name/ designation of a foodstuff incorporating agricultural products benefiting from such registered name, as well as in the labelling, presentation and advertising relating to that foodstuff: Provided that the following conditions are met:

(a) The foodstuff in question should not contain any other ‘comparable ingredient’⁷³, i.e. any other ingredient which may partially or totally replace the ingredient benefiting from the registered GI or designation of origin: Provided that if an ingredient comparable to a registered GI or designation of origin has been incorporated in a foodstuff, the registered name of the GI or designation of origin may appear in the list of ingredients only.

(b) Where possible, the ingredient should preferably be used in sufficient quantities to impart an essential characteristic to the foodstuff concerned.

(c) Any emphasis regarding the presence of the ingredient should be subject the requirements on Quantitative Ingredient Declarations (QUID), as specified in the regulations published under the Foodstuffs, Cosmetics and Disinfects Act, 1972 (Act No. 54 of 1972). (Optional)”.

The EU Guidelines⁷⁴ on the labelling of foodstuffs using protected designations of origin (PDOs) or protected geographical indications (PGIs) as ingredients notes⁷⁵ that –

“... while the incorporation of a product with a PDO or PGI in a foodstuff could of course constitute a major outlet for such quality products, care should nevertheless be taken to ensure that any reference to such incorporation in the labelling of a foodstuff is made in good faith and does not mislead consumers”.

Hence, the regulation of the use of GI-protected products as ingredients in other processed products is aimed at preventing the use of such GI products in bad faith, at preventing the use of such GI-protected products in other foodstuffs from tarnishing the reputation of such a GI and finally to prevent the consumer from being misled as to the composition of the processed product/foodstuff produced⁷⁶.

Regulation 3(2)(b)(iv) of the GI Regulations further prohibits the ‘illicit use of a GI logo or designation of origin logo’. Where a GI protected product is used as an ingredient in another foodstuff, care should be

taken that the reference to the GI symbol in conjunction with the trade name of that foodstuff does not mislead the consumer.

The EU Guidelines on the use of GI-protected products as ingredients also advise against the use of PDO or PGI symbols in conjunction with trade names if such use could mislead the consumer or unduly exploit the reputation attached to such symbol⁷⁷:

“... symbols accompanying the registered name should be used in labelling, within or close to the trade name or in the list of ingredients of the foodstuff only if it is made clear that the said foodstuff is not itself a PDO or PGI. Otherwise, the Commission takes the view that this would result in the undue exploitation of the reputation of the PDO or PGI and result in consumers being misled. For example, the trade names ‘Pizza au Roquefort’ (Pizza with Roquefort) or ‘Pizza élaborée avec du Roquefort AOP’ (Pizza prepared with Roquefort PDO) would hardly give rise to a dispute in the eyes of the Commission. By contrast, the trade name ‘Pizza au Roquefort AOP’ (Pizza with Roquefort PDO) would clearly be ill-advised, in as much as it could give the consumer the impression that the pizza as such was a product benefiting from a PDO”.

2.4.6 Agricultural Products which fail to meet the product specifications for a GI-protected product

Regulation 20 of the GI Regulations governs the production, packaging, labelling and marketing (presented for sale) of agricultural products which fail to meet the requirements for the use of a registered GI. It distinguishes between the following two scenarios:

(a) The situation where such product has been legally marketed under such name for at least five (5) years prior to the publication of a Notice of application for registration in the Government Gazette of the relevant GI.

Note that the relevant date used for the calculation of the period is the date of the notice notifying the application for (and not the registration of) the particular GI.

Such a product may be –

- produced, packaged and labelled under such name for a period not exceeding two (2) years following the afore-mentioned publication; and
- presented for sale (marketed) for a period not exceeding three (3) years following the afore-mentioned publication⁷⁸.

(b) The situation where the product specifications of a registered GI have been amended as provided for in the GI Regulations.

The agricultural product in question may –

- continue to be produced, packaged, labelled and presented for sale (marketed) under the previous specification for a period not exceeding twelve (12) months from the date of publication of an amendment in the Government Gazette⁷⁹.



3. Concluding remarks

The recent promulgation of the GI Regulations on 10 February 2023 has paved the way for the registration and protection of GIs related to agricultural products and foodstuffs in South Africa.

With this opportunity come additional responsibilities on the monitoring, inspection and enforcement agencies within DFSQA and DFIES. This handout has been prepared with the objective to introduce these agencies (i.e., inspectors and assignees) to GIs and to function as a reference tool to assist them in the application and enforcement of the rules of use for protected GIs as provided for in the GI Regulations.



Addendum: Situation with respect to EPA GIs listed under Annex 1 of EPA Protocol 3⁸⁰

As noted in paragraph 2.2.2 of this handout South Africa have agreed to grant recognition and protection to the GIs of the EU and the UK under separate EPAs. Hence, for purposes of this handout, the discussion of GIs protected under Protocol 3 of the EU/SADC EPA applies *mutatis mutandis* also to the relevant provisions under Protocol 3 of the UK/SACUM EPA.

Section A.1 of Annex 1 of Protocol 3 of the EPA currently allows for the protection in the EU of three South African GIs related to agricultural products and foodstuffs namely:

- Honeybush/Heuningbos/Honeybush tea/Heuningbos tee under the product category of 'Infusion';
- Rooibos/Red Bush/Rooibostee/Rooibos tea/Rooitee/Rooibosch under the product category of 'Infusion'; and
- Karoo meat of origin under the product category of 'Meat'.

None of these GIs have yet been registered as South African GIs under the GI Regulations at the time of writing this handout. An application for the registration of the name Karoo Lam/Karoo Lamb under the 2019 GI Regulations was rejected.

As noted elsewhere in this handout, there rests no obligation on South Africa to provide for the protection of GIs by means of specific legislation. Hence, protection is afforded to these names in South Africa as prohibited marks under the provisions of the Merchandise Marks Act (refer to paragraph 2.3.2.2).

Similarly, Section B.1 of Annex 1 of Protocol 3 of the EPA provides for the recognition and protection of 105 EU GIs related to agricultural products and foodstuffs.

Under Article 7 of EPA Protocol 3, both the EU/UK and South Africa are allowed to add additional GIs to the list provided for as part Annex I to that Protocol⁸¹. In order to promote the development of GIs in South Africa, the country is allowed to add 30 more names with priority for protection to its list of EPA GIs in accordance with the procedures laid down under Article 13⁸² of EPA Protocol 3⁸³.

The table below provides an overview of the current status of protection of these GIs under the GI Regulations.

The implication for those EU EPA GIs used in relation to agricultural products or foodstuffs where the specific product category itself falls outside of the scope of regulation under the APSA or where a particular product within a regulated product category is not **yet** regulated under the APSA is this: if the product is not regulated under the APSA in terms of Section 3(1) of the said Act, it falls outside the scope of protection provided for under the GI Regulations. Hence, such a GI remains ineligible for registration under Regulation 6 of the GI Regulations until such time as it falls within the scope of the Regulations (i.e. until it falls under the regulation of Article 3(1) of the APSA).

Geographical Indication	Product category	EU Member State	Falling within the scope of the APSA, with product specifications provided for	Falling within the scope of the APSA, but with product specifications outstanding	Falling outside the scope of the APSA
Fruit, vegetables and cereals fresh or processed					
Žatecký chmel	Hops	Czech Republic		x	
Hopfen aus der Hallertau	Hops	Germany		x	
Tettnanger Hopfen	Hops	Germany		x	
Ελιά Καλαμάτας/Elia Kalamatas	Olive	Greece	x ⁸⁴		
Φασόλια Γίγαντες Ελέφαντες Καστοριάς/Fassolia Gigantes Elefantas Kastorias	Beans	Greece		x	
Κονσερβολιά Αμφίσσης/Konservolia Amfissis	Olive	Greece	x ⁸⁵		
Κορινθιακή Σταφίδα Βοστίτσα/Korinthiaki Stafida Vostitsa	Currants	Greece		x	
Cítricos Valencianos/Cítrics Valencians	Valencia	Spain		x	
Pruneaux d'Agen/Pruneaux d'Agen mi- cuits	Prune	France		x	
Arancia Rossa di Sicilia	Orange	Italy		x	
Cappero di Pantelleria	Capers	Italy			x
Mela Alto Adige/Südtiroler Apfel	Apple	Italy		x	
Pomodoro di Pachino	Tomato	Italy		x	

Geographical Indication	Product category	EU Member State	Falling within the scope of the APSA, with product specifications provided for	Falling within the scope of the APSA, but with product specifications outstanding	Falling outside the scope of the APSA
Ananás dos Açores/São Miguel	Pineapple	Portugal		x	
Pêra Rocha do Oeste	Pear	Portugal		x	
Cheeses⁸⁶					
Danablu		Denmark	x		
Φέτα/Feta		Greece	x		
Γραβιέρα Κρήτης/Graviera Kritis		Greece	x		
Κασέρι/Kasseri		Greece	x		
Κεφαλογραβιέρα/Kefalograviera		Greece	x		
Arzúa-Ulloa		Spain	x		
Idiazábal		Spain	x		
Mahón-Menorca		Spain	x		
Queso Manchego		Spain	x		
Brie de Meaux		France	x		
Camembert de Normandie		France	x		
Comté		France	x		
Emmental de Savoie		France	x		
Mont d'Or/Vacherin du Haut-Doubs		France	x		

Geographical Indication	Product category	EU Member State	Falling within the scope of the APSA, with product specifications provided for	Falling within the scope of the APSA, but with product specifications outstanding	Falling outside the scope of the APSA
Reblochon/Reblochon de Savoie		France	x		
Roquefort		France	x		
Asiago		Italy	x		
Fontina		Italy	x		
Gorgonzola		Italy	x		
Grana Padano		Italy	x		
Mozzarella di Bufala Campana		Italy	x		
Parmigiano Reggiano		Italy	x		
Pecorino Romano		Italy	x		
Pecorino Sardo		Italy	x		
Pecorino Toscano		Italy	x		
Provolone Valpadana		Italy	x		
Taleggio		Italy	x		
Edam Holland		Netherlands	x		
Gouda Holland		Netherlands	x		
Tiroler Bergkäse		Austria	x		
Queijo S. Jorge		Portugal	x		

Geographical Indication	Product category	EU Member State	Falling within the scope of the APSA, with product specifications provided for	Falling within the scope of the APSA, but with product specifications outstanding	Falling outside the scope of the APSA
Queijo Serra da Estrela		Portugal	x		
White Stilton cheese/Blue Stilton cheese		United Kingdom	x		
Meat products⁸⁷					
Nürnberger Bratwürste/Nürnberger Rostbratwürste ⁸⁸		Germany	xx		
Dehesa de Extremadura		Spain	x		
Guijuelo		Spain	x		
Jamón de Huelva		Spain	x		
Jamón de Teruel		Spain	x		
Salchichón de Vic/Llonganissa de Vic		Spain	x		
Sobrasada de Mallorca		Spain	x		
Canard à foie gras du Sud-Ouest (Chalosse, Gascogne, Gers, Landes, Périgord, Quercy)		France	x		
Jambon de Bayonne		France	x		
Bresaola della Valtellina		Italy	?	x	
Cotechino Modena		Italy	x		

Geographical Indication	Product category	EU Member State	Falling within the scope of the APSA, with product specifications provided for	Falling within the scope of the APSA, but with product specifications outstanding	Falling outside the scope of the APSA
Mortadella Bologna		Italy	x		
Prosciutto di Modena		Italy	x		
Prosciutto di Parma		Italy	?	x	
Prosciutto di San Daniele		Italy	x		
Prosciutto Toscano		Italy	?	x	
Speck Alto Adige/Südtiroler Markenspeck/Südtiroler Speck		Italy	x		
Zampone Modena		Italy	x		
Szegedi szalámi/Szegedi téliszalámi		Hungary	?	x	
Tiroler Speck		Austria	x		
Chouriça de Carne de Vinhais/Linguíça de Vinhais		Portugal	x		
Presunto de Barrancos		Portugal	x		
Salpicão de Vinhais		Portugal	x		
Olive Oil					
Καλαμάτα/Kalamata		Greece		x	
Κολυμβάρι Χανίων Κρήτης/Kolymvari Chanion Kritis		Greece		x	

Geographical Indication	Product category	EU Member State	Falling within the scope of the APSA, with product specifications provided for	Falling within the scope of the APSA, but with product specifications outstanding	Falling outside the scope of the APSA
Λακωνία/Lakonia		Greece		x	
Σητεία Λασιθίου Κρήτης/Sitia Lasithiou Kritis		Greece		x	
Aceite de Terra Alta/Oli de Terra Alta		Spain		x	
Aceite del Baix Ebre-Montsià/Oli del Baix Ebre-Montsià		Spain		x	
Aceite del Bajo Aragón		Spain		x	
Baena		Spain		x	
Les Garrigues		Spain		x	
Priego de Córdoba		Spain		x	
Sierra de Cádiz		Spain		x	
Sierra de Cazorla		Spain		x	
Sierra de Segura		Spain		x	
Sierra Mágina		Spain		x	
Siurana		Spain		x	
Huile d'olive de Haute-Provence		France		x	
Toscana		Italy		x	

Geographical Indication	Product category	EU Member State	Falling within the scope of the APSA, with product specifications provided for	Falling within the scope of the APSA, but with product specifications outstanding	Falling outside the scope of the APSA
Veneto Valpolicella/Veneto Euganei e Berici/Veneto del Grappa		Italy		x	
Azeite de Moura		Portugal		x	
Azeite do Alentejo Interior		Portugal		x	
Azeites da Beira Interior (Azeite da Beira Alta, Azeite da Beira Baixa)		Portugal		x	
Azeite de Trás-os-Montes		Portugal		x	
Azeites do Norte Alentejano		Portugal		x	
Azeites do Ribatejo		Portugal		x	
Other products (spices etc)					
Κρόκος Κοζάνης/Krokos Kozanis	Saffron	Greece		x	
Azafrán de la Mancha	Saffron	Spain		x	
Natural gums and resins					
Μαστίχα Χίου/Masticha Chiou	Resin	Greece			x
Confectionary/Baker's ware					
Jijona	Nougat	Spain			x
Turrón de Alicante	Nougat	Spain			x

Geographical Indication	Product category	EU Member State	Falling within the scope of the APSA, with product specifications provided for	Falling within the scope of the APSA, but with product specifications outstanding	Falling outside the scope of the APSA
Λουκούμι Γεροσκήπου/Loukoumi Geroskipou	Turkish Delight	Cyprus			x
Essential oils					
Huile essentielle de lavande de Haute-Provence	Lavender Oil	France			x
Fisheries product					
Huîtres Marennes Oléron	Oysters	France			x
Sauces⁸⁹					
Aceto Balsamico di Modena		Italy	x		
Aceto balsamico tradizionale di Modena		Italy	x		



Endnotes

¹ Ref: EuropeAid/140873/DH/SER/ZA

² Regulations relating to the Protection of Geographical Indications and Designations of Origin used on Agricultural Products intended for sale in the Republic of South Africa, No. R. 3023 of 10 February 2023, published in the Government Gazette No.48015 of 10 February 2023.

³ Regulation 1 of the GI Regulations.

⁴ Regulation 1 of the GI Regulations. A similar definition is provided for in Article 22:1 of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights which reads: “*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*”.

⁵ South African Rooibos Council: Application for protection of the name ‘Rooibos/Red Bush’ in terms of Regulation (EU) No 1151/2012, ZA/PDO/0005/02427, p. 5.

⁶ eAmbrosia.

⁷ Regulation 18 of the GI Regulations.

⁸ ‘*Geographical Indications – An Introduction*’, WIPO Publication No. 952E/2021, page 23.

⁹ Report on the Workshop on the value of Geographical Indications for the agricultural value chain held on 19 October 2021, p.3. This report was delivered under the EU-SA Partners for Growth program with

financial assistance of the European Commission and was conducted through the GFA Consulting Group GmbH in partnership with DNA Economics, European Centre for Development Policy Management (ECPDM) and Eurochambres.

¹⁰ Article 4 ‘Objective’ of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality systems for agricultural products agriculture and foodstuffs (OJ 2012 L 343, p. 1) noted as follows: “*A system of protected designations of origin and protected geographical indications is established in order to help producers of products linked to a geographical area:*

a) by ensuring fair incomes with regard to the qualities of their products;

b) guaranteeing uniform protection of names as an intellectual property right in the territory of the Union;

(c) by providing consumers with clear information on the properties of the product giving it added value”.

¹¹ Judgment of the European Court of Justice (Fifth Chamber), Case C-490/19 dated 17 December 2020 in the matter between *Interprofessional Syndicate for the Defense of Morbier Cheese versus Livradois Cheese Company SAS* (the *Morbier* case), paragraph 35.

¹² https://www.wipo.int/geo_indications/en/faq_geographicalindications.html.

¹³ https://www.wipo.int/geo_indications/en/faq_geographicalindications.html.

¹⁴ Annex 1C: Part II: Section 3: Geographical Indications of TRIPS.

¹⁵ Also designated as Protocol 3.

¹⁶ Annex 1, Section B.1. of Protocol 3 of the UK/SACUM EPA.

¹⁷ Regulations relating to the Protection of Geographical Indications used on Agricultural products intended for sale in the Republic of South Africa made under the APSA, published in Government Gazette No. 4324, No.R.447 dated 2 March 2019.

¹⁸ Section 13A of the LPA.

¹⁹ Notice 722 of 2016 prohibiting the use of geographical indications of the European Union in connection with the sale of liquor products, made under the LPA and published in Government Gazette No. 40382 dated 28 October 2016.

²⁰ Notice regarding the final prohibition on the use of certain words, Notice No. 1303 of 21 October 2016 made under the MMA and published in the Government Gazette No. 40359 dated 21 October 2016.

²¹ Notice regarding the final prohibition on the use of certain words, Notice 911 of 2013 made under the MMA and published in Government Gazette No. 36807 dated 6 September 2013.

²² Notice regarding the final prohibition on the use of certain words, Notice 988 of 2013 made under the MMA and published in the Government Gazette No. 36888 dated 4 October 2013.

²³ Section 42 of the TMA.

²⁴ Section 43(2) read with Section 43(3) of the TMA.

²⁵ Regulation 56(3) of the Trade Mark Regulations issued under the TMA.

²⁶ Section 43(1) of the TMA.

²⁷ Regulation 57(3) of the Regulations issued under the TMA.

²⁸ Regulation 21(1) of the GI Regulations.

²⁹ Regulation 21(6) of the GI Regulations.

³⁰ CJEU, 7 June 2018, C-44/17, *Scotch Whisky Association*, EU:C:2018:415 at paragraph 38.

³¹ Article 22:2(a) of TRIPS.

³² Article 10bis (2) of the Paris Convention. The following examples are provided of prohibited acts of unfair competition: '*All acts of such a nature as **to create confusion** by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor; false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor; and Indications or allegations the use of which in the course of trade is **liable to mislead the public** as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods*' [own emphasis added].

³³ Article 22:4 of TRIPS.

³⁴ According to Article 24:6, first sentence of TRIPS there is no obligation to provide protection for a GI '*with respect to goods or services for which the GI is identical with the term customary in the common language as the common name for such goods or services in the territory* [of South Africa].

³⁵ '*Geographical Indications – An Introduction*', WIPO Publication No. 952E/2021, page 22.

³⁶ Article 24:9 of TRIPS.

³⁷ CJEU, 7 June 2018, C-44/17, *Scotch Whisky Association*, EU:C:2018:415 at paragraph 29.

³⁸ CJEU, 7 June 2018, C-44/17, *Scotch Whisky Association*, EU:C:2018:415 at paragraph 32.

³⁹ Note that Protocol 3 of the EU/SADC EPA extends the additional level of protection provided for wines and spirits in the TRIPS also to EPA GIs (agricultural products and foodstuffs).

⁴⁰ CJUE, 2 May 2019, C-614/17, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, EU:C:2019:344 at paragraph 21.

⁴¹ See also the ruling in the *Scotch Whisky* case: CJEU, 7 June 2018, C-44/17, *Scotch Whisky Association*, EU:C:2018:415.

⁴² CJUE, 2 May 2019, C-614/17, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, EU:C:2019:344 at paragraph 22.

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- ⁴³ CJUE, 2 May 2019, C-614/17, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, EU:C:2019:344 at paragraph 32.
- ⁴⁴ CJUE, 2 May 2019, C-614/17, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, EU:C:2019:344 at paragraph 39.
- ⁴⁵ CJUE, 2 May 2019, C-614/17, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, EU:C:2019:344 at paragraph 38.
- ⁴⁶ CJUE, 2 May 2019, C-614/17, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, EU:C:2019:344 at paragraph 40.
- ⁴⁷ CJUE, 2 May 2019, C-614/17, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, EU:C:2019:344 at paragraph 41.
- ⁴⁸ CJUE, 2 May 2019, C-614/17, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, EU:C:2019:344 at paragraph 40.
- ⁴⁹ CJUE, 2 May 2019, C-614/17, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, EU:C:2019:344 at paragraph 41.
- ⁵⁰ CJUE, 2 May 2019, C-614/17, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, EU:C:2019:344 at paragraph 42.
- ⁵¹ CJUE, 2 May 2019, C-614/17, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, EU:C:2019:344 at paragraph 43.
- ⁵² CJUE, 9 September 2021, C-783/19, *Comité Interprofessionnel du Vin de Champagne*, EU:C:2021:713, at paragraph 66.
- ⁵³ CJUE, 9 September 2021, C-783/19, *Comité Interprofessionnel du Vin de Champagne*, EU:C:2021:713, at paragraph 68.
- ⁵⁴ CJUE, 9 September 2021, C-783/19, *Comité Interprofessionnel du Vin de Champagne*, EU:C:2021:713, at paragraph 66.
- ⁵⁵ CJUE, 21 January 2016, C-75/15 at paragraph 38.
- ⁵⁶ CJUE, 21 January 2016, C-75/15 at paragraph 48.
- ⁵⁷ CJEU, 7 June 2018, C-44/17, *Scotch Whisky Association*, EU:C:2018:415 at paragraph 52.
- ⁵⁸ CJEU, 7 June 2018, C-44/17, *Scotch Whisky Association*, EU:C:2018:415 at paragraph 65.
- ⁵⁹ OJ 2012 L343, p.1.
- ⁶⁰ CJUE, 17 December 2020, C-490/19, *Syndicat interprofessionnel de défense du fromage Morbier*, EU:C:2020:1043, at paragraph 28.
- ⁶¹ CJUE, 17 December 2020, C-490/19, *Syndicat interprofessionnel de défense du fromage Morbier*, EU:C:2020:1043, at paragraph 28.
- ⁶² CJUE, 17 December 2020, C-490/19, *Syndicat interprofessionnel de défense du fromage Morbier*, EU:C:2020:1043, at paragraph 29.
- ⁶³ CJUE, 17 December 2020, C-490/19, *Syndicat interprofessionnel de défense du fromage Morbier*, EU:C:2020:1043, at paragraph 32.
- ⁶⁴ CJUE, 17 December 2020, C-490/19, *Syndicat interprofessionnel de défense du fromage Morbier*, EU:C:2020:1043, at paragraph 33.
- ⁶⁵ CJUE, 17 December 2020, C-490/19, *Syndicat interprofessionnel de défense du fromage Morbier*, EU:C:2020:1043, at paragraph 36.
- ⁶⁶ CJUE, 17 December 2020, C-490/19, *Syndicat interprofessionnel de défense du fromage Morbier*, EU:C:2020:1043, at paragraph 37.

⁶⁷ CJUE, 17 December 2020, C-490/19, Syndicat interprofessionnel de défense du fromage Morbier, EU:C:2020:1043, at paragraph 39.

⁶⁸ CJUE, 17 December 2020, C-490/19, Syndicat interprofessionnel de défense du fromage Morbier, EU:C:2020:1043, at paragraph 10.

⁶⁹ CJUE, 17 December 2020, C-490/19, Syndicat interprofessionnel de défense du fromage Morbier, EU:C:2020:1043, at paragraph 40.

⁷⁰ Whereas this provision forms the basis for a separate claim of infringement in both Article 16(b) of EU Regulation No 110/2008 and Article 5(1)(b) of Protocol 3 of the EPA, the manner in which Regulation 3(2) of the GI Regulations presents it, removes it as a separate claim apart from a claim based on ‘any direct or indirect use’. Instead, Regulation 3(2)(a) makes it part of Regulation 3(1) as examples of ‘any direct and indirect use’ as formulated in Regulation 3(1). The same applies with respect to Regulation 3(2)(b). However, it will be recalled from the judgement in the **Scotch Whisky** case that, in “*the context of Article 16(a)* [i.e. similar to Regulation 3(1) of the GI Regulations] *of Regulation No 110/2008, the Court notes that the scope of that provision must necessarily be distinguished from that of the other rules for the protection of registered geographical indications, which are set out in points (b) to (d) of Article 16. Point (a) must, in particular, be distinguished from the situation covered by point (b) of Article 16, which refers to ‘any misuse, imitation or evocation’, [similar to Regulation 3(2)(a) of the GI Regulations] that is to say, situations in which the **sign at issue does not use the geographical indication as such but suggests it in such a way that it causes the consumer to establish a sufficiently close connection between that sign and the registered geographical indication** [emphasis added]”.*

The implication of the formulation of the claim as set out in Regulation 3 of the GI Regulations, read with the interpretation provided for in the **Scotch Whisky** judgement with respect to the phrase “any direct and indirect use” is that for purposes of Regulation 3(2)(a)(i) – (iv) and 3(2)(b) the “*the sign at issue must use the registered geographical indication [or registered designation of origin] in an identical form*”. This calls into question then the application of Regulation 3(2)(a)(i). If the registered GI is used in an identical form or at least in a form that is phonetically and/or visually highly similar, there is little room for the contested designation to ‘imitate’ or ‘allude to’ the registered GI, keeping in mind the Court’s interpretation given to the term ‘evocation’ in the **Scotch Whisky** case.

⁷¹ Note 2 of Section B.1 (‘Agricultural products and foodstuffs’) of Annex I to EU/SADC EPA Protocol 3.

⁷² Regulation 3(2)(a)(iv) of the GI Regulations.

⁷³ The EU Guidelines on the use of GIs as ingredients, paragraph 2.1.2, first indent mentions as an example of a ‘comparable ingredient’ a blue cheese (or a blue-veined cheese) as comparable to ‘Roquefort’ cheese.

⁷⁴ Document 2010/C 341/03 published in the Official Journal of the European Union dated 16.12.2010 (EU Guidelines on the use of GI-protected products as ingredients).

⁷⁵ Paragraph 1.1 of the EU Guidelines on the use of GI-protected products as ingredients.

⁷⁶ Paragraph 1.1 of the EU Guidelines on the use of GI-protected products as ingredients.

⁷⁷ Paragraph 2.1.3 of the EU Guidelines on the use of GI-protected products as ingredients.

⁷⁸ Regulation 20(1)(a) and (b) of the GI Regulations.

⁷⁹ Regulation 20(2) of the GI Regulations.

⁸⁰ This addendum is an adaptation of information extracted from a study with the title ‘*Research Paper on aspects of the regulation of Geographical Indications related to certain agricultural products, foodstuffs and liquor products in South Africa*’ compiled by Hilton Lambert – Practitioners of Trade Law for DNA Economics, September 2020, pp.23 – 34 with Annexes 1 – VI.

⁸¹ Article 7(1) of Protocol 3.

⁸² Article 13 of Protocol 3 makes provision for the establishment of a Special GI Committee tasked with the “the purpose of monitoring the development of this Protocol, intensifying their cooperation, exchanging information, notably product specifications or summaries thereof, and improving their dialogue on GIs”. The Committee is allowed to determine its own rules of procedures.

⁸³ Article 7(6) of Protocol 3.

⁸⁴ Annexure A 'List of imported GI table olives protected under the EU SADC EPA', of the Regulations relating to the grading, packing and marking of table olives intended for sale in the Republic of South Africa No. R. 956 of 1 October 2021, published in Government Gazette No. 45243 dated 1 October 2021.

⁸⁵ Annexure A 'List of imported GI table olives protected under the EU SADC EPA', of the Regulations relating to the grading, packing and marking of table olives intended for sale in the Republic of South Africa No. R. 956 of 1 October 2021, published in Government Gazette No. 45243 dated 1 October 2021.

⁸⁶ Table 12 of the Regulations relating to the classification, packing and marking of dairy products and imitation dairy products intended for sale in the Republic of South Africa, No. R. 1510 of 22 November 2019, published in Government Gazette No. 42850 dated 22 November 2019.

⁸⁷ Annexure A 'List of imported GI processed meat products protected under the EU SADC EPA', of the Regulations regarding the classification, packing and marking of processed meat products intended for sale in the Republic of South Africa No. R. 1283 of 04 October 2019, published in Government Gazette No. 42740 dated 4 October 2019.

⁸⁸ The GI 'Nürnberger Bratwürste/Nürnberger Rostbratwürste' is also regulated by the Regulations regarding the classification, packing and marking of certain raw processed meat products intended for sale in the Republic of South Africa No. R. 2410 of 26 August 2022, published in the Government Gazette No. 46789 dated 26 August 2022.

⁸⁹ Table 2 of the Regulations regarding the classification, packing and marking of vinegar and imitation vinegar intended for sale in the Republic of South Africa, No. R. 1340 of 07 December 2018 published in Government Gazette No. 42090 dated 7 December 2018.