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The Italian experience

Two thousand years ago, marching along large sections of a 300,000 km road network (probably the most extensive public works ever undertaken) the Roman Legionnaires ventured to the outermost borders of the Empire carrying in their kitbags the essential things needed for their survival. One of these was the "*serum*" made from goat milk, processed to make it last for a long time: it was the forerunner of the cheese known today as "*pecorino*" which is made in several parts of Central Italy.

Some one thousand years later - in the Middle Ages - a wise bishop of the Church of Rome, in the course of a visit some distance away from what is now the capital of the Italian Republic, stopped on his way near Montefiascone. The improvised picnic organised for the occasion was accompanied by a local wine of such high quality that the distinguished guest uttered a Latin expression of ecstatic wonderment: "*Est, est, est*" which has remained to this day as the name for that particular local variety of fermented grapes.

These are just two examples to provide some idea of the degree to which history - even more recent history, without necessarily going back millennia - helps to define the specific features of certain foodstuffs, derived from the processing of agricultural products. Over a fairly long period of time, production techniques, which are often, but not always, artisanal, were gradually refined and eventually became established in special forms and procedures which are always recognisable, and recognised by the consumer public in terms of their special character.

This is all the more true in an increasingly globalised market, as is the case

today, when foodstuffs are available to countries which, for centuries, had suffered from persistent food shortages, while consumers in the more advanced countries are becoming increasingly more sophisticated, demanding, and better informed.

These products were subsequently linked to notions such as, primarily, their origin in a specific, often narrow, geographical area. This is an essential aspect which is of great relevance to the EU as much as being of interest in terms of food. The conservation of a landscape, a natural environment, no less than a human environment, a traditional culture which is always linked to a given territory, are values that range well beyond the communities of farmers or workers directly involved in making a particular product: the latter are the stakeholders in a rich legacy which – if I may be allowed to make a rather daring comparison – is like a theatrical performance of the daily events in a great saga where we are both the spectators and the satisfied consumers.

This is obvious, because consumers also have important part to play in the definition, acceptance and encouragement to producing traditional foods. This is particularly true in the advanced societies where the scourge of hunger has long since been resolved, and we take it for granted that we are able to meet our essential needs, where the economic value-added is more obvious and there is an ever-increasing demand for value-added in terms of consumption, there is now a general demand for food of a particular quality just as – "*mutatis mutandis*" – it has become a trend in fashion and design. As in fashion and design, there can be a whole range of imitations, fakes, and even all-out fraud, which makes adequate protection a necessity, beginning with forms of traceability of which the Geographical Indications are the most secure way of protecting traditional foodstuffs.

It is a form of protection which, as far as consumers are concerned, consists of a clear, codified reference on the packaging, while the producers must have a logical justification and a consistent legal system of certification and guarantees before the products are placed on the market.

In short, this is the Italian view of the notion of Geographical Indications for a fairly wide range of products depending on the country concerned: a notion with deep roots in the history of the country, its creativity, its traditional foods, the original agricultural and artisanal traditions and the social, economic and

territorial dimension of the time, often dating back many centuries, when a particular product became firmly established in terms of its characteristics in terms of composition, aroma and taste.

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High quality Italian agrifood products (with quality generally coinciding with their Geographical Indication) are generally plentiful on foreign markets. In addition to the members of the European Union, the leading importers are normally the countries with a cultural tradition most similar to our own, that is to say, high-income countries such as Australia, Canada, Croatia, Japan, New Zealand, the United States and Switzerland. There is also a promising expansion of Italian Geographical Indications in a number of emerging countries such as China, Egypt, The Philippines, India, Indonesia, Israel, Malaysia, Russia, Singapore and Turkey.

Even though high quality agrifood products only account for a comparatively small share of Italian exports, they nevertheless play a major part in characterising our country, in the way they directly reflect that quality of Italian life which plays such an important part in making Italy's consumer goods so attractive throughout the world. The unparalleled value of Italian products taken as a whole is therefore a powerful and useful element of the identity, not only of Italian agriculture but of our national exports in general. This identity dimension is therefore yet another reason that motivates and justifies the commitment that Italy has always devoted to protecting her Geographical Indications, originally in our national legislation and subsequently with increasing commitment across the years in international legislation.

While the most common Italian products with a Geographical Indication at the moment are wines and oil, cheeses and cured meat products, several producers' consortia are engaged in a major promotional effort to spread information and to expand to other product areas and territories of origin. For the time being, Italy's high quality food exports are worth about 20 billion euros. This is a huge figure in itself, but far less so when one considers that the world consumption of imitation products – the so-called Italian-sounding products – is estimated to be worth twice that figure.

For these latter products are nothing short of unfair competition acting against our own producers because they are deliberate imitations of Italian products and at least on the labels provide indications that are misleading to consumers, and it is the consumer who ultimately recognises a product and is responsible for its economic success. The abiding gap between the European vision and European law is particularly serious in this regard. For European law sees no incompatibility between Geographical Indications and marks, and the traditional approach of the United States and the other English-speaking countries in particular, which argue – not infrequently for calculated ends – that the protection provided by a brand name is sufficient to safeguard the special features of any foodstuff.

We shall be seeing shortly the breadth of the dispute which, among other things, casts worrying shadows over the outcome of the ongoing negotiations at the World Trade Organisation, it should also be recalled that the practice of containing imports by the particularly widespread abuse of non-tariff barriers against high-quality foodstuffs.

It is particularly by imposing targeted and costly phytosanitary requirements, applying deliberately lengthy control measures and, in more general terms, complex and cumbersome customs formalities, applying to the courts following rather opaque procedures and/or "guarantistic" procedures, that some countries pursue the aim of containing the spread of food imports which threaten to occupy substantial local consumption niches.

It is obvious that Italy wants an international set of rules to protect Geographical Indications that are able to guarantee at least a minimum level of protection, by certification and by their application, to ensure respect for the true identity of the products concerned. It is equally obvious that Italy expects the current multilateral negotiations in this sector to come up with rules which are consistent with those which have been established long since in Italy and in other countries with similar legal and food tradition.

Italy protects Geographical Indications and Designations of Origin identifying a country, a region or a locality, when these are used to designate a product originating there, and whose qualities, reputation and characteristics are due

exclusively or essentially to the geographical area of origin, taking into account the natural, human and traditional factors. This definition, drawn from experience, has long been consistently reaffirmed even in the most recent Italian legislation.

Moreover, notwithstanding the rules against unfair competition, the international conventions on this subject, and trademark rights previously acquired in good faith, Italian law prohibits the use of geographical indications or designations of origin when this is likely to mislead the public, or of any other element in the designation or presentation of the product indicating or suggesting that the product comes from a locality other than its real place of origin, or that the product possesses qualities that are specific to products of a locality designated by a particular geographic indication. Legislative Decree No. 30 of 10 February 2005 provides that this protection does not make it permissible to prevent third parties from using their own name or the name of their assigns in the same economic activity, except where that name is deliberately used to mislead the public.

There are also laws for individual products specifically governing the requirements to be met to accede to one or other protected category. Let us take the case of wine names, for which Law no. 164 of 10 February 1992 lays down highly detailed specifications regarding the classification of Designations of Origin and Geographical Indications and their uses, identifying the specifications and production zones, including the vineyards register and the grape and wine production report, establishing procedures for recognition and revocation, and even regulating the recipients and the bottling processes, and laying down penalties for all offences against the law: all this is under the control of the Ministry for Agricultural Policies and a special National Committee for the Protection and Use of Designations of Origin and Geographical Indications typical of wines.

This is very specific legislation which makes it possible to draw an appropriate distinction between trademark protection and the protection of Geographical Indications, and at the same time it is absolutely non-discriminatory, by giving

the same protection to Italian producers and to foreign producers who operate in Italy in the specific territory of origin and agree to abide by the rigorous specifications governing production, and all the other statutory requirements.

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Under the advocacy of Italy and most of the other member countries, the European Union has also taken up the notion of Geographical Indications in its legislation, guaranteeing them EU protection measures within the Community area. In 1992, for example, Regulation 2081 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs came into force.

The European Union's aim of promoting quality products with specific characteristics is to achieve a series of interconnected objectives specified in the Regulation. First of all, there is support for less-favoured communities or remote areas, by improving the incomes of farmers and by retaining the rural population in their traditional home settlements and areas; it also makes provisions guaranteeing respect for consumers who can only make the best choices if they have clear and concise information on the precise origin of every product; it also aims at consolidating the credibility of the products themselves, standardising the whole area of law governing Geographical Indications.

This does not of course exclude the possibility of extending the area of formal recognition of Geographical Origin to products other than farm products and foodstuffs that have been taken into account as a matter of priority. The regulation also introduces a series of EU requirements to guarantee the information to ensure that the business community in the sector and the consumer public are properly informed, beginning with rigorous compliance with the special specifications dedicated to each specific Geographic Indication nomenclature.

Community Law is perfectly consistent with Italy's experience in this field beginning with the very definition of Geographical Indication, accompanied by measures and conditions reflected in the Italian legislation. The main points are conformity with the specifications laid down for each product, the introduction of a special register of products by the Commission, which is assisted by a special Committee of Control and a whole series of procedural and substantive

requirements. Of these latter, the specific rules of particular relevance to the theme of this Seminar is the requirement that "A name may not be registered as a designation of origin or a geographical indication where it conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the public as to the true origin of the product". Then there is the provision that: "A designation of origin or geographical indication shall not be registered where, in the light of a trade mark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product".

Such a wide-ranging and detailed statutory framework inevitably gave rise to reservations in countries with different legal and food traditions from the rest of the European countries, and which do not have provisions for a system and a centralised list protecting specific food products. Indeed, the General Agreement on Trade and Tariffs (GATT) which governed this area until 1996, merely provided that "The contracting parties shall co-operate with each other with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation."

For this reason, too, the countries advocating the use of Geographical Indications have always been anxious to include clauses to protect their products in all bilateral trade treaties that they conclude. It is only natural that, since the beginning of geographical indication certification, the owners of products distinguished in this manner should try to persuade their international interlocutors of the soundness of the procedures and to involve them in protecting their products at home and abroad. Despite this, opponents to universal recognition have stubbornly opposed – and are still opposing – the principle in the World Trade Organisation (WTO) and in negotiations taking place there.

Eloquent, in this connection, is the formal dispute between the United States and the European Union which was brought some time ago before the WTO dispute settlement organs. The United States has argued that the European system violates of the TRIPS agreement and is also in conflict with the so-called

national treatment obligation, by preventing participation by non-European WTO members.

The 2004 decision on the substance of this issue came down in favour of the United States (concluding that the conditions of equivalence and reciprocity postulated by the TRIPS agreement were not reflected in the Community Regulation which discriminated against non-European parties and therefore violated the multilateral trade agreement), thereby making it inevitable for EU legislation to be adjusted accordingly.

However, according to the Dispute Settlement Body, the European Geographical Indications system was not in itself unlawful, and was compatible with the international trademarks system (which American Federal legislation alone protects), the rights of whose title-holders are exceptionally constrained in respect of Geographical Indications which have been duly registered, certifying that they come from a clearly circumscribed territorial area.

Overall, the situation is not satisfactory to the "Friends of Geographical Indications" group who, in the course of the DDA negotiations, are insisting on generalising acceptance of this notion, giving it a legal value guaranteed by registration and by imposing penalties for infringements. For even before the dispute arose, the original Doha mandate had made provision for a wines and spirits register: this commitment was later reiterated at the 2005 Hong Kong Conference, together with an express reaffirmation of the fact that the negotiations would have to be completed to coincide with the conclusion of the DDA negotiations. The Hong Kong Conference also urged governments to step up their efforts to extend the system of Geographical Indications to products other than wines and spirits.

Consultations on the subject have been dragging on for a long time already, as we know, with no sign of any substantial coming-together of views. There now appears, however, to be an increasing sensitivity towards the purpose and the forms of protection in several developing countries, which are beginning to understand the advantages of promoting their own food specialties. Italy believes that the DDA agreement as envisaged can never be satisfactorily concluded without adequate safeguard clauses protecting Geographical Indications not dissimilar to the level of agreement reached on the other chapters in the negotiations.

It has also been argued in American academic circles that what were hitherto seen as diametrically opposed viewpoints are not irreconcilable. Forms of protection for specific products are not inconsistent with the United States system, albeit not at the Federal level but only in individual State legislations and not as a matter of general criteria as is the case with the European system, but on *an ad hoc* basis, in the sense that they must refer to specific products. Although, on the one hand, the United States main reservations have to do with the breadth of the area guaranteed protection under EU law, the fact remains that in the practical implementation of EU law, the Europeans have shown comparative moderation by waiving the need for registration of quite a large number of traditional products where trademark protection and its importance have been deemed to be a sufficient guarantee against imitation.

But the development of America's food and gastronomy culture has boosted not only the demand, but also the production, of popular local foodstuffs. A special market has therefore emerged, which is now demanding appropriate forms of visibility and protection.

This is also a niche market, which does not have the same identification function as the European Geographical Indications, and therefore appeals to a wholly marginal sensitivity on the part of the American public in comparison with other, far more substantial, economic interests which are at work in the DDA negotiations.

In essence, trademark protection, as applied in the American system can easily be reconciled with the Geographical Indications system, because both pursue the same basic purposes. While the United States has to become more aware that there is no fundamental contradiction between the two systems, Europe must reflect on how to more accurately circumscribe the scope of the Geographical Indications, in order to facilitate a compromise that is not only feasible but, without any doubt, appropriate from the point of view of the certainty of international law.

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The truth of the matter is that the question of Geographical Indications is one of the most interesting and complex issues in contemporary commercial law and its worldwide harmonisation. Such harmonisation is demanded by the rapid development of globalisation which, even when it does not integrate is nevertheless bringing markets together to an unprecedented degree. And this is precisely one of the tasks of the WTO and forms part of the remit of the negotiations currently taking place in Geneva. The question of the DDA in particular is likely to produce far-reaching consequences in contemporary geo-economic arrangements, further strengthening the need for agreement.

Any future DDA Convention must necessarily include a strengthening of the laws governing intellectual property, and hence also geographical indications which will have to be included in the remit. It will provide an opportunity to clarify the uncertainties that still exist over the universal acceptance of this notion, which are not wholly absent from the European definition.

It is clear that in order to achieve this result, which Italy sees as an absolute imperative, it would at least be appropriate to re-examine the notion of Geographical Indications from a conceptual viewpoint even before the legal implications, also taking account of tradition and EU regulations. The main purpose of this would be to dispel any misunderstandings or inconsistencies between the protection of trademarks and Geographical Indications, and prevent the adoption of haphazard or contradictory initiatives for the registration of trademarks or Geographical Indications within the European Union.

The breadth of the definition adopted in the Union sometimes opens up the risk of encroaching into a somewhat generic dimension, as if the mere fact of recognising the system by applying to join created the applicant's right to be rewarded with registration. In essence, in the presence of even vague elements of originality and tradition there is a tendency to apply an essentially broad interpretation of the eligibility requirements for recognition, which makes leaves some loopholes in the present system.

Might it be appropriate to place greater emphasis on the requirement of the specificity of the foodstuffs for which recognition is requested? Probably it would, provided that the system did not demand the same narrow level of specificity that is required for the grant of a trademark. Tradition, and the special character of the product, should be such that it is possible to clearly distinguish

it from others of different origin, but with very similar, if not identical, history, composition, taste and external aspects.

These are factors that have to be weighed up very carefully, and relate to the other aspect of the territorial delimitation of the area of origin of each Geographical Indication. This must not be so broad as to render a particular product essentially generic, save where this is the result of rather complex, albeit traditional, processing systems. To a certain extent one might argue that the more sophisticated the traditional production techniques have become across the years, attracting a high level of satisfaction on the part of the direct consumers, the broader will be the area of origin justifying recognition of the Geographical Indication.

These are obviously considerations requiring very careful consideration through an appropriate analysis in terms of the product and its organoleptic qualities. But at all events they all fit in with the aim of pursuing a better targeted and delimited definition of any particular category of foodstuffs. Other aspects also deserve to be examined carefully to more accurately define them, so that the protection rules can be more strictly applied.

In this connection it should be recalled that the more certain the designation, the more credible the whole Geographical Indications system will be. From this point of view we might also ask whether the edibility of a traditional product – whether a primary commodity or a processed foodstuff is irrelevant – ought to be yet a further criterion for setting the minimum threshold for the grant of protection. One good example is a very clearly and specifically recognisable product: the car. A car is identified in terms of its capacity to carry people and goods: but it is not identified by the raw materials or the component parts which, individually, have no other function than to work together to make up the end product of a clearly identified process, in the form of a commodity that the consumer public can recognise.

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These assumptions – and there are probably others – are well worth exploring to prevent the persistence of the preconditions and divisive ideological positions that have so far hampered the consolidation of a common and universally accepted doctrine of Geographical Indications.

Reaching agreed conclusions in this sensitive area as part of the Doha Process will provide yet another instrument to be used to help differentiate the agri-food offering, while also enriching their cultural value to consumers, as well as improving the producers' incomes.

Such considerations clearly also apply to coffee, as one of the world's most common beverages, which is drunk in a wide range of different forms, some more and some less traditional. It is a product, let us not forget, that is becoming increasingly important to the Italian economy considering the exponential worldwide growth in popularity of Espresso coffee made according to the Italian tradition. The case of Italian Espresso coffee is a typical interpretation and evolution of an extraordinary commodity – the coffee bean – the product of a different coffee-roasting tradition and a combination of raw materials, which has produced a distinct beverage with a specific taste and organoleptic qualities.

The aim that must drive us on is therefore to create a consistent system governing Geographical Indications and trademarks, each with its respective merits, but also our mutual relations: if we succeed in attaining this objective it cannot fail to benefit the international coffee market. An insightful, farsighted and accurate universal application of Geographical Indications is in the general interest, and it would benefit the vast public of consumers as it would the narrower, but no less important, community of producers.