

USDA Foreign Agricultural Service

GAIN Report

Global Agricultural Information Network

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Geographical Indications - Status and Procedures

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Trade Policy Monitoring

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Report Highlights:

Polish Ministry of Agriculture does not perceive Geographical Indications (GI) as a potential threat for the TTIP negotiations. There are 37 Polish GIs registered in the European Union, however, according to the Polish Ministry of Agriculture the list of potential products which can be registered is constantly growing.

General Information:

Meeting with the Polish Ministry of Agriculture

On March 4, 2015, Agricultural Attaché Russ Nicely met with Mr. Dariusz Goszczynski, Deputy Director, Department of Agricultural Markets, Ministry of Agriculture and Rural Development, to discuss Poland's position on Geographical Indications (GI) in relation to the May 11-21, 2015 Diplomatic Conference in Geneva and TTIP negotiations.

Mr. Goszczynski explained that so far Poland does not have a position to be presented at the Conference in Geneva and it was not decided whether Poland would participate in the conference. However, he said that according to his knowledge 95 percent of EU GI products do not create any problems with the U.S. and only 5 percent of GIs need negotiations. He also mentioned that none of the Polish GI products were within this 5 percent.

Mr. Goszczynski explained that Poland is interested in enhancing the role of GI. The Ministry of Agriculture perceives GI as a tool to support and enhance the Common Agricultural Policy. GIs also help to improve economic situation of medium and small farms located mainly in Eastern and Southern Poland. Production of GIs gives farmers a chance to improve their living conditions and develop special types of production based on quality, tradition and ecology. Farmers from these farms also become more competitive versus larger and modern farms in Western and Northern Poland. GI products also help in development of agro-tourism within Poland because people like to visit certain places known for production of specific products.

Director Goszczynski explained that he has been responsible in the Ministry of Agriculture for GI since 2004. After Poland's EU accession in 2004 he prepared a list of potential GI products in Poland. He continues to update the list in consultation with the Marshals of local governments and currently the list accounts for 1,000 products. Although some of products on the list do not meet EU standards for GIs, their number indicates the potential of development of registration of Polish GIs in the future. He admitted that Poland does not have a tradition of production of GI like France, Italy or Spain. Currently there are 37 Polish GI products which are registered in the European Union.

Mr. Goszczynski presented several cases of disputes regarding registration of GI products within the EU.

1. Polish Vodka "Wyborowa" which is not only a generic brand name well known all over the world but was also registered as a GI product in the EU;
2. A dispute between Poland and Slovakia regarding registration of Oscypek cheese - Oscypek in Poland is produced out of not pasteurized sheep milk, while in Slovakia it is produced from pasteurized cow's milk. The dispute which was also monitored by the European Commission ended with registration of two different products in Poland and Slovakia;
3. For Feta cheese some companies wanted to prove that it is a generic name not specific to Greece. The EU court decided that it is a GI product because consumers perceive it as product from Greece. In some cases Feta producers in Europe used pictures from Greek Mythology on

labels of Feta cheese which could confuse consumers;

4. In the dispute between Germany and Italy whether Parmegiano regiano cheese and Parmezan cheese are the same or different products, the European court decided that it is the same product;
5. Although Polish “kielbasa” is a generic name but “Kielbasa Lisiecka” is a GI product because it indicates a specific region where it is produced.

Mr. Goszczynski explained that although GIs are regulated by EC regulation 1151, the European Union requires that, at the member state level, control of the GI must be carried out by member state governmental organizations. Below is a detailed description of the procedure of registration and supervision of GIs in Poland. Please note that in the European Union under the term Geographical Indications there are three categories of products: Protected Designation of Origin (PDO), Protected Geographical Indication (PGI) and Traditional Specialties Guaranteed (TSG).

Process of registration and control of GIs in Poland

The Ministry of Agriculture and Rural Development is responsible for product registration of Geographical Indicators. The Ministry is responsible for receiving, evaluating and transmission of requests for registration of designations of origin, geographical indications and traditional specialties guaranteed to the European Commission.

The law on the registration and protection of names and designations of agricultural products and foodstuffs and on traditional products also regulates the following issues:

- The rules and procedures for the assessment of applications for registration of designations of origin, geographical indications and traditional specialties guaranteed;
- The conditions for temporary protection of designations of agricultural products and foodstuffs at national level before the registration of the EU;
- The principles and procedures for inspection of agricultural products and foodstuffs with a protected designation of origin, protected geographical indication or traditional specialty guaranteed;
- Penalties for counterfeiting products whose names are protected.

Definitions used by the EU, for protection of regional and traditional names:

PDO - Protected Designation of Origin

PGI - Protected Geographical Indication

TSG - Traditional Specialties Guaranteed

Protected Designation of Origin (PDO) designates products attached to the name of the region, specific place or, in exceptional cases, the name of a country that is used to describe agricultural product or foodstuff. The product's quality or characteristic features must be mainly or exclusively connected with the specific geographical environment, as well as the natural and human factors, such as climate, soil quality and local knowledge, appropriate to it. The whole of the technological process, meaning: production, processing and preparation, takes place in this specific geographical area;

Protected Geographical Indication (PGI) designates the name of the region, specific place or, in exceptional cases, the name of a country that is used to describe agricultural product or foodstuff originating from that region, place or country. This product has its specific, unique quality and

reputation, it is known or has other features attributed to this geographical place of origin. One of the three processes - production, processing or preparation of the product - must take place in the defined area;

Traditional Specialties Guaranteed (TSG) designates a feature or set of features which distinguishes an agricultural product or a foodstuff from other products similar to them or from products belonging to the same category. The characteristic may be its physical, chemical, microbiological or organoleptic feature such as the taste, flavor or specific raw materials used for production. The product can be called “traditional”, when it has been on the common market for the period of time equal to one generation i.e. at least 25 years.

Registered names are protected against:

- commercial use of a registered name in respect of products not covered by the registration if they are comparable to the products registered under that name or if this use exploits the reputation of the protected name;
- any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar;
- any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- any other practice liable to mislead the consumer as to the true origin of the product.

Enforcement and Administration

Here are the bodies involved in the control and certification system of products registered as PDO, PGI or TSG and their authorities:

- **The Minister of Agriculture** authorizes the Agricultural Market Agency for certification and controls confirming that products registered as PDO, PGI and TSG meet the requirements laid down in the specification;
- **The Chief Inspector of Agricultural and Food Quality Inspection (AFQI):** supervises the certification bodies authorized by the Minister of Agriculture;
- **The Provincial Inspector of Agricultural and Food Quality Inspection (AFQI):** carries out verification with compliance with specification of products with PDO, PGI and TSG;
- **Authorized certification bodies - which carry out verification with compliance with specification of products with PDO, PGI and TSG.** (6 authorized certifying bodies in regional and traditional products operate in Poland. The selection of certification body is made by producers, who cover the costs of the inspection.)

Procedure of application

1. Procedure at the national level

Registration is the outcome of a private voluntary initiative on the part of an interested party or a producer. The first step is to lodge an application for registration.

a. The applicant

The system of registration is voluntary and open. Any producer located in the area and respecting the conditions of production specified in the product specification is entitled to use the registered name to market its product. Therefore, applications are usually made in the name of producer groups. A group means any association of farmers, producers and/or processors dealing with the same product. Other interested parties, for example consumers, may also participate in the group. Such groups prepare together the application for registration of their products.

b. The content of the application

The application must clearly state whether the name is to be registered as a protected geographical indication (PGI), a protected designation of origin (PDO) or as a Traditional Specialties Guaranteed (TSG).

The application for registration of a name must include the following elements:

- Product specification;
- Other supporting documents upon which the Member State decides that the application is complete. For example, such documents could include the results of surveys or literary works proving the reputation of a name or maps showing the particular natural elements of a geographical zone. Additional illustrative documents, such as photos, menus, recipes or invoices can be useful;
- A summary of the application which is published in the Official Journal of the European Union in all the official languages of the EU, which allows any person with a legitimate economic or legal interest to consult and object to the application.

c. Specification

The specification is the main evidence in support of the application. It is therefore the determining factor both in obtaining registration and in imposing discipline on conditions of manufacture.

Main elements of the specification:

- Name - This should include the name of a region, a specific place or, in exceptional cases, a country (remark: in principle, names of countries cannot be registered, but it is possible when the area of the country presents homogeneous geographical environment). In case of a designation of origin, it can be a traditional name, not necessarily geographical, indicating an agricultural product or foodstuff originating exclusively from a specific region or defined geographical area.

A name may not be registered 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;
 - registration is liable to mislead the consumer as to the true identity of the product in case of a trademark with particular reputation and renown and the length of time it has been used.
- Description - This should include the raw materials to be used and determine the principle characteristics of the product or foodstuff, i.e.:
 - physical (shape, color, weight);
 - chemical (minimum fat content, maximum water content);
 - microbiological (type of bacteria present);
 - biological (race, species);
 - and/or organoleptic (color, taste, flavor, odor).

It is also important to indicate how the product can be presented, because its name will be registered for the indicated form, for example, fresh, canned or desiccated, etc. If the name is allowed to designate the product in a further stage, for instance processed, cut, sliced, grated and/or packaged, this has to be specified as well as any specific conditions required. This will allow the applicant to determine at or until which point of transformation the product displays the characteristics of the name.

- Geographical area - This is the area in which the production and/or processing takes place. Generally, the limits of the area are naturally defined by natural and/or human factors which give the final product its particular characteristics. Supporting documents, such as maps, must be provided.
- Proof of origin - This section refers to evidence that the agricultural product or foodstuff originates in the geographical area. This is related to the „traceability” of a product, i.e. following the product’s path from its area of production to its final destination. The specification must include the measures taken to ensure this traceability, for example register-keeping and specific controls. Illustrative documents such as flow-charts or tables showing all the steps of the process and control points could be provided.
- Methods of production - This should include:
 - methods of obtaining the agricultural product or foodstuff;
 - if appropriate, the unvarying and local methods of production;
 - in certain cases, information concerning the packaging, if the group making the request determines and justifies that the packaging must take place in the limited geographical area to safeguard quality, ensure “traceability” or ensure control.
- Link - The explanation of the “link” is the most important element of the product specification in view of registration. The link must provide an explanation of why a product is linked to one area, and not another; i.e. how far the final product is affected by the characteristics of the region in which it is produced.

A demonstration that a geographical area is specialized in a production is not enough to justify the link.

In all cases, the effect of geographical environmental or other local conditions on the quality of the product should be emphasized.

For designations of origin, the explanation should provide a description of the geographical environment with the inherent natural and human factors which have an effect on the quality or characteristics of the product.

Natural factors may consist of characteristics of the area influencing techniques and uses or giving the raw materials of the product particular characteristics. Relevant information may concern the soil and the subsoil, the geography of the area, such as relief and slope, climate and microclimates, vegetation, landscape, etc. It should be explained in which way these specific characteristics can influence the final product and why the production is adapted to this particular environment.

Human factors concern the local and specific production methods of the area. For example, these include the choice of area in which to plant (e.g., areas protected from the wind), adaptation of the geographical area to suit the method of production, special constructions for production (e.g., mills, storage, etc.) as well as the development of local know-how or special skills in production. In most cases, the natural factors interact closely with the human factors. It is important to explain how the producers have taken advantage of the specific characteristics of the area to develop their product.

d. Inspection body

- Inspection structure

Registration can be made only upon ensuring an appropriate inspection system. Therefore, set up of an inspection structure is mandatory. The Commission does not carry out the inspections itself; Member States are wholly responsible for this matter and have some leeway to organize their own systems. The inspections may be carried out by designated inspection authorities, or by approved private bodies. For each PDO, PGI or TSG registered it must be indicated which inspection body is appointed. The responsibility can be delegated to national bodies.

- Labelling

The Community logo (a symbol placed on an application for registration) may be used only on the registered products. Therefore, a category of the registered product must be indicated (PDO, PGI or TSG).

In Poland the competent authority to receive an application for registration is the Ministry of Agriculture and Rural Development. The application is checked whether it has been duly drafted to meet formal requirements (it must be complete and have necessary documents) and whether it is justified. The Ministry of Agriculture conducts proceedings in this scope. Any interested natural or legal person should be provided with the opportunity to object to an application for registration at national level. It is very important, since objections coming from the same Member State cannot be examined during the registration procedure at Community level. After having completed the procedure at national level, the Ministry of Agriculture transmits the application to the European Commission in Brussels. From the date of the transmittal till the decision on registration is taken by the European Commission, geographical indications, designations of origin and traditional specialties guaranteed

enjoy transitional protection.

2. Procedure at Community level

a. Examination by the European Commission

Once the application was received, the Commission has six months to conduct formal investigation whether the application meets all the requirements and the name qualifies for protection. If the Commission finds formal defects, it may ask for supplementary information from the Member State. In this situation, the period of six months starts again from the date the answer of the Member State is received.

b. First publication

If the Commission finds that the application meets the requirements for registration, it decides to publish the summary application in the Official Journal of the European Union. Within a six-month period from the date of publication, statements of objection as to the registration of a geographical indication and/or a designation of origin can be transmitted to the Commission.

c. Objections procedure

A statement of objection is admissible, if:

- the product does not meet the conditions required;
- the name is a generic name;
- registration of the name would cause conflict between the trademark and the geographical indication.

If the Commission finds that the objection is not admissible, it is rejected. In such a case the name will be registered. When the Commission finds the objection admissible, it passes the matter to the Member State concerned, with a request to reach, within three months, a mutually acceptable solution, under the so called „amicable procedure“.

d. The Register

If no statement of objection has been received within six months, or, if the outcome of the objection procedure is a decision to register, the name is entered in the Register of protected designations of origin and protected geographical indications.