Question 5:

Is there a need to clarify or adjust any aspects of the rules laying down the rights of geographical indication users and other users (or potential users) of a name?

Following the conclusions of the European Court of Justice in the "Parmesan case" (Commission vs Germany, C-132/05, February 2008), there is an urgent need to clarify the rules concerning the *ex officio* protection of PDOs/PGIs in the Regulation 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. Whereas the Commission has reaffirmed the existence of the principle of *ex officio* protection in the 2006 Regulation, there is a need to clarify the procedures for its concrete implementation by national authorities in Member States. Given the very nature of PDOs/PGIs and the limited financial resources available to many associations of producers of geographical indications, GI producers think that the *ex officio* protection is a crucial element of the overall system.

Furthermore, there is a need to clarify the application of articles 13 and 14 of the EC Regulation 510/06 (as well as articles 44 and 45 of the EC Regulation 479/2008 and articles 16 and 23 of the EC Regulation 110/2008) to national trademark offices as well as the Office for the Harmonization of the Internal market (OHIM). By virtue of the above-mentioned provisions, trademarks' applications identical of confusingly similar to a PDO or PGI must be refused. This is not always the case and such trademarks have been registered all around Europe by non-authorized entities, which are not related to the legitimate producers and are not based in the area of the PDO/PGI.

Finally, the role of producers' groups should be clarified and strengthened, in particular with regard to the management of production volumes and the so-called "packaging in the area of production" ("conditionnement dans la zone géographique").

What criteria should be used to determine that a name is generic?

ECJ jurisprudence is clear in this respect. The "genericity" of a name shall be declared only if the name becomes generic in the country of origin (EXPORTUR vs LOR & Confiserie du Tech. case, 26 March 1999, Case t-114/96: "*The status of the name in the State of origin*"). The elements arising from the case law are clear. GI producers think there is no need for further clarification.

Are any changes needed in the geographical indications scheme in respect of:

– the extent of protection?

It should be clarified that the use of geographical names within a geographical protected area (such as "café de Bogotá" or "Edinburgh Whisky") according to the modalities set forth in article 13, can be an infringement of the exclusive right granted by PDOs/PGIs.

Moreover, the extent of the protection should cover the use of geographical names in the domain names, at least the ccTDLs (the country code top level domains of Member States, such as .fr, .it, etc.) as well as the ".eu".

– the enforcement of the protection?

Specific guidelines should be provided for States that have to act *ex officio* in order to enforce the rights arising from Regulation 510/2006 in case of PDO/PGI violations.

– the agricultural products and foodstuffs covered?

An exhaustive list of products covered by the protection seems not to be the most effective and rational system. So conceived, the system does not leave much room for flexibility (and recently the EU had to extend the list of products covered by the Regulation 510/2006 to cotton and salt). Some other products that might well fall into the concept of "geographical indication" are still excluded, such as silk. A better system would be an indicative list accompanied by a general definition of the concept of geographical indication. This would allow the Commission to evaluate case-by-case the requests of registration and avoid subsequent legislative interventions.

Should the use of alternative instruments, such as trademark protection, be more actively encouraged?

Yes, but with a preliminary consideration. Trademarks provide geographical names with a different kind of protection (in terms of costs of registration, extent of protection, enforcement, etc.) compared to PDOs/PGIs. Overall, the European *sui generis* system for the protection of GIs (established by the EC Regulation 510/06, the EC Regulation 479/2008 and the EC Regulation 110/2008) better fits the interest of GI producers.

Having said that, trademarks' registrations of geographical names are useful to get protection in several countries outside the EU, either through a national registration (for instance a certification marks in the US), or an international registration via the Madrid system (administered by the World Intellectual Property Organization) which provides for the protection of the trademark in the various contracting parties of the Agreement. With this in mind, the use of trademarks can be encouraged by the Commission.

Question 6:

Should additional criteria be introduced to restrict applications for geographical indications? In particular, should the criteria for protected geographical indications, as distinct from protected designations of origin, be made stricter to emphasise the link between the product and the geographical area?

The distinction between PDOs and PGIs should be kept. The PGI system allows for the preservation of local productions, which are based on local tradition and reputation passed on over generations. The existing "two-tier system" well reflects the needs of the various origin-based producers in Europe, some of them lacking the raw materials in the production area.

The "differentiation" already achieved through the 2 logos is a positive step. Resources should rather be allocated by the Commission in order to help consumers within the common market to better understand the difference between PDOs and PGIs.

Should specific sustainability and other criteria be included as part of the specification, whether or not they are intrinsically linked to origin? What would be the benefits and drawbacks?

Sustainability and other criteria cannot be introduced. Geographical indications, like trademarks, patents, copyright, etc. are intellectual property rights (IPRs). IPRs are human rights (the right of benefit from the result of human ingenuity and intellect, see article 27.2 of the Universal Declaration of human rights: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author – this is also reflected in the Covenant on Economic, Social and Cultural Rights), which cannot be denied based on "sustainability" criteria. When the definition of PDO or PGI is met (as indicated in art. 2 of EC Regulation 510/06 – and here the rationale is that the product must be linked to the "terroir"), then the rights should be conferred. Any limitation based on economic and/or sustainability criteria would not be justifiable. Furthermore, such limitation would hurt the small origin-based productions all around Europe, which are so important for local development as well as for the preservation of the environment and ancient "savoir-faire".

Question 7:

What kind of difficulties do users of geographical indications face when trying to ensure protection in countries outside the EU? What should the EU do to protect geographical indications in the most effective way in third countries?

The main problems for producers seeking protection outside the EU are encountered in countries that protect GIs through trademark systems. Often the geographical name at issue is considered generic or a previous registration has been filed ("first in time, first in right" principle). In this respect, the EU should support the European producers having legal cases concerning GIs in foreign jurisdictions.

The most effective way for the EU to help its producers protect their GIs in third countries is strengthening the WTO rules ("multilateral way"). The EU should increase its efforts to obtain the extension of art. 23 of the TRIPS Agreement to all products and the establishment of a truly multilateral system for GI registration. The system should be: opened to all products, compulsory for all WTO Member States and producing meaningful legal effects (in this respect, the draft modalities for the reform of TRIPS proposed in July 2008 go in the right direction). The creation of multilateral rules applicable to a large majority of countries (the 153 WTO Member States) would create a minimum level playing field that would increase the transparency and predictability of the rule of law, to the benefit of producers and consumers. In this respect, in order to persuade countries to support such a reform, additional technical assistance projects on GIs should be sponsored by the EU to allow those countries to fully benefit from their origin products. This is extremely urgent under the current circumstances, because of the latest developments within the Doha Round and the continuous efforts of a minority of WTO Member States to leave the issue of "GI extension" out of the "single undertaking".

Meanwhile, the signature of regional and bilateral agreements with "strategic countries" (that represent key markets for the EU GI export) should be pursued. Producers exporting in those countries should be systematically consulted in the negotiation process.

To promote the enforcement of geographical indications in foreign markets, the EU should make sure that GIs are included in the scope of application of the Anti-Counterfeiting Trade Agreement (ACTA).

Question 8: Have any difficulties arisen from the advertising of PGI/PDO ingredients used in processed products/prepared foods?

Yes, GI producers regularly encounter difficulties from the use of PDO/PGI ingredients in processed foods as well as from the advertisement of such a use.

The registration of a geographical name in the EU gives producers who comply with the specifications of the PDO/PGI an exclusive right on the use of the name. In principle, those producers can prohibit the use of the denomination for other products. However, the extent of protection of the producers' rights differs in the Member States.

Since the number of products using PDO/PGI as ingredients has been increasing, it is crucial to develop a set of rules at the European level that will ensure the reputation of PDOs/PGIs is not tarnished and consumers are duly protected against misleading labelling. Within the single market, clear conditions should be attached to the use of PDO/PGI in processed products/prepared foods.

We believe GI producers' groups should be allowed to take measures to ensure that the PDO/PGI is effectively used in processed products/prepared foods. Some criteria to ensure this is achieved are as follows:

- The GI ingredient is the only of its category (for example, the only cheese used in the processed product);
- The company that uses the GI ingredient must be able to prove the origin of the GI;
- The GI producers' group must authorise the use of its protected name in processed products/prepared foods and public controls are used to ensure the enforcement of such rules.

The labelling rules must be harmonised at the European level to ensure that the protection of PDO/PGI is the same in all the Member States.

Question 9: What are the advantages and disadvantages of identifying the origin of raw materials in cases where they come from somewhere else than the location of the geographical indication?

Identifying the origin of the said raw materials is a useful way to inform the consumer of the real nature of the final product. However, it is important to define carefully what is considered as raw material. For instance, the indication of the origin of certain products, such as salt, could complicate the process and should not be compulsory. Moreover, it should be noted that the issue is often dealt with by the rules on labelling.

Question 10: Should the three EU systems for protection of geographical indications be simplified and harmonised and, if so, to what extent? Alternatively, should they continue to develop as separate registration instruments?

A single European system for registration, protection and controls for all GI products should be set up. It will help consumers understand the system as well as the kind of protection

given to GI products. Since wines and spirits were given a higher degree of protection, the other GI producers would benefit for a harmonisation of the 3 systems (agricultural products/foodstuffs, wines and spirits) at the EU level.

Furthermore, the existence of 3 different systems at the European level does not help the EU negotiating position at the WTO, where the Commission has been fighting for the extension to all GI products of the higher protection conferred to wines and spirits by virtue of art. 23 of TRIPS.