

GREEN PAPER. Making the most out of Europe's traditional know-how: a possible extension of the geographical indication protection of the European Union to non-agricultural products COM/2014/0469 final.

Response from Albion Stone PLC, UK

**Question 1.**

Do you see advantages or disadvantages in the currently diverse levels and means of GI protection for non-agricultural products in the different Member States of the EU? Please explain your response.

*Albion Stone's response:* - There are no advantages in the current diverse system of GI protection for non-agricultural products in the EU. Consumers are being routinely misled and producers are seeing market share eroded by often cheaper and inferior products being 'passed-off' as their own.

**Question 2.**

Do you think that enhanced and harmonised EU GI protection for non-agricultural products, at EU level, could have positive economic effects in the internal market as set out above?

*Albion Stone's response:-* It is certain that GI's for non-agricultural products will bring benefits for producers and the economies of member countries as set out in the Green paper.

**Question 3.**

Do you see adverse effects such protection could have on the EU economy?

*Albion Stone's response:-* No we can't see that there will be any adverse economic effects.

**Question 4.**

Do you consider that a harmonised EU GI protection for non-agricultural products could benefit consumers?

*Albion Stone's response:-* Yes. The consumer will be able to purchase with confidence that the product they are purchasing conforms to the traditional standards that are represented by that product historical use. They will not be confused by products attempting to 'pass-off' as the GI product, that are potentially inferior and subject to less stringent quality control checks and production legislation.

**Question 5.**

Do you see potential negative consequences for consumers?

*Albion Stone's response:-* No, we can't think of any adverse effects of clearer labelling for the consumer.

**Question 6.**

Do you see potential benefits or disadvantages of harmonised EU GI protection for non-agricultural products on EU trade relations with third countries? If so, where?

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*Albion Stone's response:-* For a product such as worked dimensioned stone whilst initially there may be a temporary drop in importation from the third world as the stone that are miss-selling lose market share, these products often have a rich tradition of use in their own markets. This tradition can be used to market these products into the EU as an alternative and probably cheaper product to the GI product, but under its own name and identity. In the medium and long term, this should benefit the third world producers.

#### **Question 7.**

Do you believe that harmonised protection for non-agricultural GIs at EU level would help preserve the traditional cultural and artistic heritage reflected in the eligible products? Please explain your response.

*Albion Stone's response:-* Yes, through the consumers being aware that the traditions are an important part of the process. For dimension stone these traditions often relate to certain extraction principles in the quarry and mines, as well as in some instances, the methods of working and masonry of the stones.

#### **Question 8.**

Would such protection contribute to building social capital in the areas of production?

*Albion Stone's response:-* Yes

#### **Question 9.**

Do you believe the harmonised EU GI protection for non-agricultural products could help producers defend themselves against imitations and abuse? Please explain your response.

*Albion Stone's response:-*Yes. There are numerous examples other than those listed in the Green paper. Legal action has been considered by my company, but it is cost prohibitive and inevitably retrospective so of little commercial value as we would simply be establishing that the wrong stone had been sold by a single supplier often on a single project that had probably already completed. GI protection could stop this continuous and increasing problem.

#### **Question 10.**

How could competing producers protect themselves against an over-reach of GI?

*Albion Stone's response:-* I am not sure that we understand this question. If it is suggested that the GI could provide too much protection, I think the registration process with the involvement of national associations could resolve this problem.

#### **Question 11.**

What do you think of current alternatives to harmonised protection for non-agricultural GIs?

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*Albion Stone's response:-* The current alternative to GI's for non-agricultural products is demonstrably not working. Trade Marks are invariably registered by companies and are not geographical specific.

**Question 12.**

If a new system was developed at EU level, should this protect GI's that cover non-geographical names which are unambiguously associated with a given place?

*Albion Stone's response:-* There maybe a case for certain products to be non-geographical, but I think the assumption should be that GI's cover geographical areas. For dimension stone the geographical area is paramount to the identification of the product, its extraction processes and quality control.

**Question 13.**

If so, how could the system ensure that such protection does not affect the rights of other producers?

*Albion Stone's response:-* There would be a potential problem with new producers establishing the production of a protected GI if it is not geographically based.

**Question 14.**

Should similar protection also cover symbols such as the contours of a geographical area? If so, under what conditions?

*Albion Stone's response:-* I am not sure that we really understand the question, but if the suggestion is that a geographical indication protection should follow physical rather than political geographical boundaries, then of course it should.

**Question 15.**

Do you see a need to add any further exceptions to GI protection other than those already provided in TRIPS? Please explain your response.

*Albion Stone's response:-* No. I am concerned that this could delay the process of implementation.

**Question 16.**

Do you see a need to differentiate between various protection schemes depending on the categories of non-agricultural products involved (sectorial approach)? If so, please explain why.

*Albion Stone's response:-* To allow for the timely establishment of GI's, I think it is inevitable that the sectorial approach will have to be used, but there should be some reference to the overarching GI principles.

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**Question 17.**

Do you think some products should be excluded from GI protection at EU level? If so, please specify.

*Albion Stone's response:-* There maybe a good case to defer some sections from the first phase of non-agricultural GI's, but excluding some products is unlikely to be unpopular or beneficial to the development of those products industries.

**Question 18.**

How strong should the link be between non-agricultural products and their place of origin, in order to qualify for GI protection in any new system?

*Albion Stone's response:-* The strength of the link may depend on the product and process being registered, but I think it should start from the presumption that the link is vital.

**Question 19.**

Should a new system allow for two types of link (one stronger than the other) between non-agricultural products and their area of origin?

*Albion Stone's response:-* The geographical link for dimensioned stone is crucial and certainly the most important aspect of GI protection.

**Question 20.**

Should there be differences depending on different types of products? Please explain.

*Albion Stone's response:-* Yes. A product such as natural dimension stone may be extracted from one area and predominantly processed in either the same area or a nearby area. However, it is unlikely that a particular process is 'exclusive' to those manufacturing areas so protection through GI's is going to be difficult to establish. Attempting to restrict the manufacturing to local areas may present capacity issues for surges in demand or large projects limiting sales. However if the aim is to keep local employment in rural areas through the GI's, then these local manufacturing areas are also important. For dimensioned stone, it is more important to protect the source name, as without this protection both the extraction and the manufacturing employment will be lost.

**Question 21.**

Would a quality benchmark make sense for non-agricultural products?

*Albion Stone's response:-* Yes, but it may require a degree of flexibility, for example to allow for minor geological variations in natural dimensioned stone. Manufacturers should be encouraged to adopt EN 9001 systems.

**Question 22.**

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How could such benchmark be defined?

*Albion Stone's response:-* The national association should be able to propose criteria that it reviews by the central EU authority. For dimension stone this could be based on the test results from CE certificates.

#### **Question 23.**

Do you agree that there would be a need to check whether the specific characteristics, quality and origin of a GI are maintained during the whole period of protection? Please explain.

*Albion Stone's response:-* Yes. The comments in the green paper about consumer trust should be the guiding principles to establishing the quality of the GI.

#### **Question 24.**

How do you think specific characteristics of the product should be defined to ensure quality and geographic origin meets the required standards while not limiting innovation?

*Albion Stone's response:-* It should be incumbent on the producer to demonstrate that their product is adhering to the required standard, and this process should be audited.

#### **Question 25.**

Should 'quality reputation and other characteristics' be required in order to obtain GI protection for non-agricultural products? If not all, which of these elements do you think should be required? Please explain your choice.

*Albion Stone's response:-* Yes. It is important that GI's are for the consumers to be able to rely on a historical set of qualities that have been established through responsible trading over a number of years.

#### **Question 26.**

What should a product specification include? Should minimum requirements be set? (For example, relating to frequency, method for selecting products, and parties involved in different production and distribution stages.)

*Albion Stone's response:-* Minimum requirements are vital to ensure that the product retains the high standards that were valid for its original registration. For dimension stone there are CE certificates and declarations of performance that should be the initial check for the stones continuing qualities.

#### **Question 27.**

Would harmonising national legislation be sufficient to effectively protect GIs for non-agricultural products across the internal market, or do you consider that a single EU-level protection system is required?

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*Albion Stone's response:*-It seems unlikely that that harmonising national standards would be successful. We should follow the example of the successful agricultural GI's and opt for harmonisation and enforcement procedures being agreed at an EU level.

#### **Question 28.**

If you are in favour of a single EU system, should national systems of protection (e.g. the current sui generis national laws) continue to coexist? Please explain.

*Albion Stone's response:*- A single EU system is needed with transitional arrangements established for existing national agreements.

#### **Question 29.**

If a new system were to be developed, do you think there should be a registration process to protect a non-agricultural GI?

*Albion Stone's response:*- Registration is needed and should follow the agriculture example. For dimensioned stone there is the EN 12440 which lists all the stones produced by member countries, this should be the starting point for identifying then registering GI's.

#### **Question 30.**

Do you think that the potential costs of a system of registering GIs outweigh the costs of a system without registration?

*Albion Stone's response:*- No. The costs for failure to provide the registration will be prohibitive with legal actions where companies had unwittingly contravened the GIs, with the added danger that courts may have to take a softer approach to misuse, thereby unravelling the entire protection process.

#### **Question 31.**

Do you think the registration process should involve a national element, e.g. checking compliance with product specifications, indicated geographical area, quality, reputation etc.?

*Albion Stone's response:*- As proposed in the green paper, there should be a EU wide criteria established by all the national authorities and agreed on a majority decision. This EU wide central authority can entrust aspect to specific European and national authorities who again can rely on more local bodies to check aspects of the GI, but the EU central authority should retain the right to inspect and audit the national and local GI processes.

#### **Question 32.**

If a new system is created, should producers and their associations be the only people allowed to apply to register non-agricultural GIs, or should other bodies be allowed to apply? If so, which ones?

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*Albion Stone's response:-* It may be confusing if a series of different national bodies apply for GI's simultaneously. Perhaps for a products like dimensioned stone, an organisation such as Euroroc could identify a number of national associations that should work together to produce an initial list of GIs. Once these initial GI's have gone through the process, it can be opened to a wider number of producers and associations.

**Question 33.**

Should individual producers be allowed to apply?

*Albion Stone's response:-* Yes, but there needs to be certainty that it is a genuine GI, and in the public interest. There should be obligation on the producer to clearly demonstrate this.

**Question 34.**

If a new system were to be created, would you agree that an objection process should be included and that it should be open to the same type of interested parties as under the agricultural GI rules?

*Albion Stone's response:-* Yes

**Question 35.**

Should protecting non-agricultural GIs at EU level by registration require the payment of a fee?

*Albion Stone's response:-* If non payment of a registration fee means the GI's project cant progress, then clearly a fee will need to be charged, but it must be remembered that the drive of this GI project is to assist small SME's in rural areas. There is little point of having a great GI scheme that only multi-national companies can afford. The imposition of fees also means that the split of the fees will need to be established. Should it be based on a straight split between the producers, a split on the basis of volume or value of the GI product, and what happens if one company refuses to pay? Are they still allowed to use the GI?

**Question 36.**

What level of registration fee would you consider to be fair?

*Albion Stone's response:-* I think a maximum should be set at 500euros for registration, or perhaps a fairer method would be 100 euros per year to use the GI.

**Question 37.**

What scope of protection should be granted for non-agricultural GIs in the EU?

*Albion Stone's response:-* I am sure that the producers would desire the greatest protection, the Article 23 TRIPS, but we wouldn't want a situation whereby the whole process got over complicated and progress to register and enforce the GI's slowed down or became ineffectual.

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**Question 38.**

Should the protection granted to non-agricultural GIs match the safeguards already provided to agricultural GIs at EU level. If so, how closely?

*Albion Stone's response:-* On the assumption it work for agricultural products, could it be applied to non-agricultural products?

**Question 39.**

Would you prefer a system to monitor and enforce non-agricultural GI rights that was exclusively private, public, or a combination of public and private? Please explain, taking into account, if possible, the effectiveness and costs of action to enforce rights>

*Albion Stone's response:-* The enforcement should be notified by the producers or the National Association, but the actual enforcement process surely must be a public authority. Who enforces agricultural GI's?

**Question 40.**

In your opinion, should GI protection for non-agricultural products be unlimited in duration, or limited with the possibility of renewal? If you suggest a limited duration, how long should this be?

*Albion Stone's response:-* I suggest a renewal every 10 years. The National Authority / Association could reconsider the appropriateness of the GI and its scope.

**Question 41.**

Do you agree that there should be the possibility to cancel a GI after registration?

*Albion Stone's response:-* Yes

**Question 42.**

Who should be allowed to apply to cancel the GI?

*Albion Stone's response:-*The national associations / national authorities that are responsible for establishing the GI's should be allowed to cancel the GIs , but the process should be checked by the EU control authority.

**Question 43.**

If a new system were to be established, would you agree that a cancellation process should be introduced, with the same terms and conditions as for agricultural GIs?

*Albion Stone's response:-* Yes

**Question 44.**

Do you think that GIs and trade marks should be subject to the pure 'first in time, first in right' principle (i.e. the prior right always prevails)?

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*Albion Stone's response:-* No. At the time of the registration of the GI, any relevant trademarks should be investigated by the registration authority and a decision should be made on whether the trademark associated with a single producer remains appropriate.

#### **Question 45**

Should GIs prevail, in certain circumstances, over trade marks? Please explain.

*Albion Stone's response:-* Yes., when it is in the majority of the producers and the consumers interest to do so and taking into account whether the trademark was established to restrict trade.