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The economics, law and politics of Geographical Indications for foods and beverages

Tim Josling[*]

Romeo may indeed have believed that a rose by any other name would smell as sweet, but would a feta cheese by any other name sell as well in the supermarket? Producers from a particular region who have acquired a reputation for quality, and see others cashing in on that reputation, clearly think that there it is well worth seeking protection for their names. Should this be a universal phenomenon? Or is it limited to a few wines and cheeses produced by European farmers? In the brave new world of global markets and multilateral food regulations the framework for the treatment of such geographical indications (GIs) is still under construction. And the decisions chosen could have significant impacts on farmers and consumers in all countries.

The debate is not just a technical issue of approximating diverse laws and regulations. There are strongly held views on what place GIs should have in the panoply of measures to protect intellectual property from usurpation. To some, it is an unnecessary and undesirable form of protection for producers in a particular region against competition from new entrants. If a type of product traditionally associated with a geographical region can be successfully produced in regions other than that which gave its name then any restriction on the competitive new product is likely to be resisted. If the new producer is located overseas then the restriction is presumably trade distorting. To others the question is more one of giving consumers accurate information on which to make choices. If that information is devalued by misleading use of quality-proxy names then consumers lose. Far from such informational GIs being a trade distortion, the absence of this protection would distort trade. Such contrasting views are (ostensibly) behind the difficulties in current negotiations on agreeing a multilateral registry for wines and spirit and extending the protection given to wines and spirits in the WTO Agreement on Trade Related Intellectual Property (TRIPS) to other food products.[1] But as with most trade policy issues, there is much more at stake than the impact of GIs on trade gains and losses.

This paper attempts to explore the intertwined economic, legal and political aspects of the GI issue. The main emphasis however is on GIs as an aspect of trade policy rather

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[1] The proposals to extend GI protection often include handicrafts, but these issues will not be addressed here.

than intellectual protection law or internal politics.[2] The economic aspects revolve around defining the appropriate level of protection of a form of intellectual property that is tied to reputation rather than innovation, the trade-off between lowering transactions costs through international harmonization of systems and tailoring national GI law to domestic considerations, and the extent to which global goods are created when multilateral coordination replaces national administration of GI regulations. The legal aspects involve the obligations undertaken in the TRIPS Agreement, the coexistence of different legal systems of GI protection, the litigation of conflicts as a way of interpreting the TRIPS provisions, and the bilateral agreements that seek to supplement the multilateral framework for coordination of regulations in this area. Finally, the political aspects of this issue include the attempt in the Doha Round to negotiate a multilateral register for wines and spirits, the question of extension of additional protection to other groups of products, the role that GI protection plays in EU policy, the nature of the objection of the US to EU proposals, and most fundamentally the interests of developing countries in what has often been seen as a transatlantic issue.

The Economics of GIs

The economics of GIs is somewhat different from that of other forms of intellectual property (IP) protection. The main trade-off in IP protection is between the granting of a temporary monopoly to patent holders to encourage innovation and the restrictions that this imposes on imitators who could use that invention or innovation to produce goods for sale at lower costs.[3] In the case of GIs, no invention is protected. The protection is of a reputation associated with a quality attribute linked to a geographical area. In fact, innovation may itself be restricted by such protection. Though the rents from GI protection can be ploughed back into improvements of quality, another impact is to restrict the use of technology to substitute for the elements contributed by geography. So the economic benefits of GIs must rest in large part on the provision of information to consumers who may need help in making wise choices of experience and credence goods.[4]

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[2] Much of the literature on GIs is focused on the legal issues of protection: the economic case for such protection has by contrast received much less attention. One notable exception is the study by Zago and Pick (2003). A recent paper by Hayes, Lence and Babcock (2005) also addresses the economic issues.

[3] Moschini (2004) has a succinct statement of the economics of IP protection. See also Maskus (2000).

[4] GIs are unlikely to be of much value in the case of search goods, where consumers can see the quality attributes without knowing the origin. Experience goods, where repeated purchases can overcome information asymmetries, are natural candidates for trademarks and GIs as these improve the information flow. For credence goods, where the consumer cannot easily ascertain the quality even by experience, GIs can also provide a valuable signal. In essence, the label showing the region of origin turns both an experience good and a credence good into a search good (Josling, Roberts and Orden, 2004, p.129).

GIs as information for consumers

The essence of a geographical indication is that the geographical place name indicates quality, taste or other related attributes to the consumer.[5] So at one extreme if there is no correlation between the geographical region and the quality attribute then a GI would be unambiguously meaningless to the consumer. Its protection by local law would merely have the effect of generating rents until consumers learned (through repeated tasting) of the fatuity of such labels. Thus public policy on establishing GIs should, at the least, include a test of whether such a correlation exists before protecting the regional name. All meaningless GIs should be stillborn by appropriate local policy, and patently meritorious potential GIs never see the light of day. At the other extreme, GIs that are clearly beneficial for conveying information needed by consumers for informed choices would pass a public policy cost-benefit test. There would be losers, those who could profit by some consumer confusion, but the protection of GIs could well be welfare enhancing. If public policy were limited to such cases then one would assume that controversy would be minimal. It is the range of cases between these two extremes that makes for controversy. There is often some merit in providing region of origin information to consumers but if the regulatory process is captured for private gain the consumer, and competing producers, may suffer.

So the issue of whether a GI is merited or not is essentially empirical. Each situation has to be explored individually and costs and benefits weighed. If the benefit that consumers get from the exclusive label denoting the region of origin outweighs the cost of providing that information and of enforcing the restriction then the GI is putatively justified. But this still leaves the role of governments to be defined. Information can be provided by the producers, as is done with trademarks, and any needed actions to maintain quality can also largely be a private concern. Public action would be limited to providing the framework of laws to prevent fraud and deception. And consumers should be willing to pay for the information if they find it useful. So the public sector is providing a mechanism by which the market can be differentiated to the benefit of both consumers and (protected) producers.

However, there may be situations where a greater degree of government involvement is justified. If the attributes are linked with a group of producers in a region, rather than one firm that establishes a trademark, and these producers are unable to operate a credible information/quality scheme then there could be a regional public good problem if there were no regulatory intervention. So public authorities may need to do more than provide legal remedies for deception: they may need to establish a registry, define quality standards and take steps to protect the reputation inherent in the GI from devaluation. In either case "protection" of the GI is essentially a public policy, but the responsibility for quality maintenance can be assumed by the public authorities or left to the private sector.[6]

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[5] The use of geographical indications to denote husbandry practices complicates the issue somewhat as the identification of products by the way in which they are produced poses a fundamental challenge to the trade system. See Josling, Roberts and Orden (2004) and Anderson and Jackson (2005).

[6] It is possible that collective action could also improve quality as well as signal to consumers the quality attribute that they expect. Some of these dynamic issues are addressed below.

At least conceptually, it should be possible to define the appropriate level of protection for consumers against fraud, misinformation, information asymmetries and high search costs. It follows that if protection is given in cases where the consumer benefit does not exceed the costs of providing the information then the GI is protectionist. There is "over-protection" of the consumer to the benefit of the local producers, If however, the consumer would benefit from (and be prepared to pay for) more information about the geographical origin of a product, in order to make an informed choice, then the consumer is "under-protected" and there is a market failure. The benefits in this case go to those whose product (from another region) would not have been purchased if information had been adequate.[7]

In spite of thirty-five years of awareness of these problems, since the publication of Akerlof's seminal paper on "lemons" (Akerlof, 1970), we still know little about the optimal provision of information to improve consumer decisions. A recent study seeks to address that issues in the case of the EU's GI policy (Zago and Pick, 2004). The study examined the impact on welfare of information in a vertically differentiated market. They conclude that welfare can be increased unambiguously if two distinct competitive markets emerge as a result of a fully credible certification scheme. Producers of low-quality goods are unambiguously worse off, raising issue of the distributional impact of the regulations. However, if costs are high and true differences are minor then there is a decrease in welfare.

GIs as a producer device

It would be naïve to believe that GIs are solely for the protection of consumers. The keenest advocates of systems of GI registration are producer groups, and the disputes tend to be among those groups, whether "old world" and "new world" producers, domestic and foreign farmers or large and small firms. GIs confer some degree of market power, and the associated rents are the reward for gaining legal protection against competitors. For firms, or groups of firms, to rise from the flat plains of perfect competition to the foothills of monopolistic competition is a major transformation. Product differentiation converts farmers into active market participants, with the need to consider consumer desires and meet unfilled needs. But at the same time, relations with those with more market power, the processors and supermarkets on the mountain peaks of oligopoly markets can also be improved. Participation in a food chain as a source of a specialized product is likely to be more rewarding (if possibly more risky) than providing undifferentiated raw materials to a wholesale market.

Such local monopolies clearly have a consumer cost if the ability to keep out competitors is not offset by the information provision. The study by Zago and Pick cited above also considers the possible impact on market power and shows that when product differentiation increases market power then consumers can lose even when producers gain. So any economic analysis of GIs has to consider the market structure implications both before the GI is granted and that which might emerge as a result of the GI.

[7] These concepts are explored in Josling, Roberts and Orden (2004) with respect to SPS measures. The analogy is not exact, as information about quality is not the same as information about health risks.

Trade implications

The trade impacts are in the main a direct consequence of the ability of domestic policy to provide the appropriate level of protection and information. If consumers are under-protected at home, through the absence of reliable information about where a product was produced, then there is a trade distortion. In domestic markets there will be too many imports: in foreign markets the lack of information will adversely hit sales of the product with the geographically-linked quality attribute. If consumers are over-protected in the domestic market then there will be too few imports from other areas and too many exports from the GI favored producers. Competition in third markets will also be distorted, as protected and un-protected producers compete for the consumer's allegiance. If the information is valuable then the lack of protection in either the producing or the importing market will distort trade flows. As in other areas of potential non-tariff trade barriers, the key is whether there are appropriate domestic policies in place. Where domestic policy is optimal, liberal trade subject to non-discrimination and national treatment will also be beneficial. Where domestic policy is inadequate, trade is distorted and the inadequacies show up as potential losses to other countries as well as to the mismanaged country. So much of the debate about protectionist GIs in the trade system revolves around whether GIs are being correctly protected on the home market.

Three issues put these domestic regulatory concerns in a trade policy context. One is whether the absence of adequate protection/information in one country has systemic consequences for the trade system as a whole. Is there a global public good involved that would be underprovided by even the most well-designed national GI systems? If so, there is a putative case for collective action. But for this to be the case, consumers would have to share common or at least similar perceptions about the quality attributes involved. Where such perceptions differ widely, then global systems will tend not to be warranted. Alternatively, there would have to be some significant reduction in transactions cost to justify global nomenclatures for foods and beverages to make this worthwhile. Given presumed heterogeneity among consumers and language and cultural differences it is difficult to imagine a strong case for globally defined and enforced GI provisions.

The second trade policy issue that is additional to that of optimal domestic regulation relates to the distributional impact of international GI protection. As with other IP, much of the existing stock is in the hands of the developed countries. A large part of currently protected GIs relate to goods produced in the OECD countries, predominantly in Europe. If protection is intended primarily to give market advantage to right-holders then this would represent a regressive transfer. If however consumers in the non-GI enforcing countries are being under-protected and given inadequate or misleading information then such a move toward tighter regulations would not necessarily be against the interests of developing countries.[8]

The third trade policy issue is whether national inadequacies can be corrected through negotiations, or, if not, whether deviations from adequate GI protection can be "counted" and limited by schedule. In some respects inadequate GI protection in an importing region is a market access issue as seen by the exporter. In others instances

[8] Short of a tariff on imports of these goods (or a tax on GI right-holders) it is difficult to see how the benefits would not go to the OECD firms even if the developing country consumers also gained.

the spread of GIs developed in one region to others is a form of subsidy as it confers a marketing advantage. If exporters compete in third markets, such a subsidy might be considered evidence of an export aid. So measuring the impact of GIs on trade requires some decomposition of the market situation.

To explore this impact further, consider three separate cases. If one region (call it the Old World) establishes a higher degree of protection than is warranted from the viewpoint of correcting information deficiencies in its own market then it is indeed protecting its producers just as if a quantitative restriction was used. Consumers would pay a higher price for the domestic product and the domestic producer would reap a profit at the expense of a competitive supplier in another region (say the New World, with a lower degree of protection). One should in principle be able to establish a tariff-equivalent for this policy, and potentially negotiate it downwards. However, in practice, the politics of such a negotiation would be as problematic as agreeing to reduce over protection through sanitary and phytosanitary regulations. It may require the sanctions of the dispute settlement process to achieve a policy change in this direction.

A second case would be where both the Old World and the New World are exporting competing goods to a non-producing region (call it the Third World). If the Third World has inadequate information provisions in place then Old World producers could suffer potential income losses and consumers in the Third World would have insufficient information to make informed choices. The Old World producers may see the inadequate protection of their GIs in the other market as a form of market access restriction, as they would be denied the regulatory infrastructure (protection of GIs) that they enjoyed at home. Again one could calculate what tariff would have the same trade restrictive impact. But this rests crucially on the GI protection being inadequate for consumers in the Third World. In this case the solution would be one of additional regulations and consumer information in the interests of the importer. If the provision of information was not useful to the importing country consumers then the imposition of stricter GI protection would benefit the Old World suppliers at the expense of both the New World and the Third World.

A third case is where both the Old World and the New World produce similar products and sell into each others markets, but have different systems of protection at home. New World suppliers will have an incentive to design GI protection rules that favor their products (and provide information in a form familiar to their consumers) whilst the Old World producers will design systems that are more suited to their production and market conditions. Both will expect the other producers to accept these differences and respect their idiosyncrasies. But adopting either of the two systems for use in both countries would not necessarily improve welfare. It would however influence the distribution of benefits among the competing exporters. The country whose system was chosen would gain an advantage. It is the third case that is the most indicative of much of the argument over GIs. Specifically, the US and the EU both have regulations in place to protect GIs, but these regulations differ in crucial respects and are administered in ways that exacerbate rather than relieve trade tensions. So the economic analysis requires an understanding of the regulatory environment.

The Regulation of GIs

Protection of GIs takes place within the country of production and marketing, through the specific regulatory systems developed over time. These are well developed in the EU and the US, as well as other developed countries. A discussion of the EU and US systems gives a flavor for the main mechanisms in use by WTO members. Developing countries in general have much less well-developed regulatory machinery.

If all domestic regulations were identical (and perfectly enforced) then trade in GI products would constitute no significant problem. The producing country would presumably enforce regulations relevant to the area of origin and type of product, while the consuming country would enforce marketing aspects of the regulation. Of course regulations differ greatly in practice, and so trade agreements are needed to deal with the interface of these different ways of administering GI protection. Such bilateral, plurilateral and multilateral agreements themselves offer an opportunity for countries to tilt the playing field in their favor. But understanding the place of GIs in trade agreements helps to put into context the political negotiations.

GIs in the EU

The EU has the most highly developed system of regulation for GIs. As an aspect of the "single market" that is the backbone of the economic construct of the EU, legislation falls essentially at the Community (first pillar) level.[9] Much of the legislation on GIs is incorporated in Regulation (EEC) No. 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.[10] In addition, Regulation (EEC) No. 2082/92 protects traditional recipes. Between them, these two regulations allow three different forms of protection, as described below.

The notion behind the Regulation 2081/92 (that applies as law in all Member States) is to enable consumers to make the best choice by being given "clear and succinct information regarding the origin of the product." Regulation 2081/92 establishes two categories of protected names: designations of origin and geographical indications.

Protected Designations of Origin (PDOs)

- Quality or characteristics of a product must be essentially or exclusively due to the particular geographical environment (including natural and human factors such as climate, soil quality, and local know-how) of the place of origin.[11]
- Production and processing of the raw materials, up to the stage of the finished product, must take place in the defined geographical area.

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[9] It could be noted in passing that individual EU member states have markedly different views on the question of whether and which GIs to protect. In fact the emergence of EU-wide regulations was in large part to avoid trade problems among EU members that would result from national systems of protection.

[10] Legislation in the EU governing wine appellations is separate from this Regulation.

[11] Note the link with traditional knowledge that presumably distinguishes regions with similar soil type and climate).

These conditions are designed to establish a "close and objective link" between the features of the product and its geographical origin. Thus the concept of "terroir" has its legal manifestation. Exceptions are allowed, such as when a particular term has become associated with a region.[12] Moreover, cases where the raw materials come from a larger or different geographical area can be covered if registered within a certain time frame.

Protected Geographical Indications (PGIs)

- At least one stage of the production of the protected product is undertaken within the geographical area (with, say, imported raw materials)
- There must be a link between the product and the area, though this need not be exclusive or essential. A specific quality or reputation may be sufficient to link the product with the geographical area.

The link in this case need not be close or objective: it can be based on reputation at the time of registration. Producers and producer groups can choose whether to apply for PDO or PGI protection.

Generic names, that have become common names for a product even though they refer to a geographical region, cannot be granted PDO or PGI status. No exhaustive list of generic names exists, and they are defined only when a producer group attempts to register such names.

Regulation 2082/92 adds a further category of IP protection, a certificate of special character, known as "Traditional Specialities Guaranteed" (TSG).

Traditional Specialities Guaranteed (TSGs)

- The product must have distinguishing features that set it apart from other agricultural product or foodstuff in the same category. This could include taste or specific raw materials. However, the special character cannot be a particular geographical origin.
- The product's specific character must be "traditional" in that it uses traditional raw materials, or is produced or processed in a traditional way.

The name or symbol used to register the TSG must describe the specific characteristic of the product or must itself be specific. The TSG designation thus complements the PDO and PGI categories in those cases where the geographical dimension is less important than the traditional attribute that producers wish to emphasize.

The regulations cover most food and many non-food agricultural products.[13] Over 700 products have been registered as PDOs, PGIs or TSGs. Most are cheese, fresh meats, meat-based products, honey, olive oil, fruits and vegetables (see Table 1). This indicates that their purpose has expanded somewhat from protecting well known geographical terms to essentially local produce of which few outside their country of origin, much less in the rest of the world, would have heard.

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[12] The EU working document give as an example the French cheese Reblochon, which is associated with a particular area even though not a place name (EU 2004, p.6).

[13] However, mineral and spring waters are subject to another directive (Council Directive 80/777/EEC, 15 July 1980).

The concentration of PDOs and PDIs in a few countries itself is noteworthy. The dominance of the southern members, Italy, Portugal, Greece and Spain, along with France, indicates the strong trend toward the differentiation of products by locality in these countries. Many northern countries have not (yet) caught the local food bug. Finland, Sweden, Denmark and Ireland together have registered nine PDO/PGIs. Germany has 64 products registered, indicating that the food system has experienced considerable differentiation. Allowing for the fact that some northern products are classified as generic, the bi-modal distribution of registrations is notable.

Table 1: Distribution of PDOs and PGIs in the EU (2003)

Member	Number	Main Commodity Groups
Belgium	4	Meat products
Denmark	3	Cheeses
Germany	64	Beers and other drinks
Greece	83	Cheeses, olive oil, fruits
Spain	68	Cheeses, fruits
France	131	Fresh meats, cheeses
Ireland	3	Cheese and meat products
Italy	126	Fruits, cheese, meat products and olive oil
Netherlands	6	Cheeses
Luxembourg	4	Meats and meat products
Austria	12	Cheeses, fruits
Portugal	85	Meats, fruits and cheeses
Sweden	2	Cheese, bakery products
Finland	1	Fruit
UK	27	Cheeses and meats

Source: Rangnekar (2004)

The EU has pushed hard for expansion of TRIPS protection for a number of these products, as discussed below. But the EU is not awaiting the outcome of the WTO talks to advance its “protected quality agenda.” It has negotiated bilateral treaties with Australia, Chile and South Africa that mutually protect a number of GIs. These bilaterals may go some way to defusing the tensions in the WTO, as it is more difficult to argue against a multilateral agreement similar to one that one has negotiated bilaterally. More significantly, they offer an alternative option if the multilateral path is blocked.

US GI protection

US protection of GIs is fundamentally different from that practiced by the EU.[14] Current US policy does not recognize GIs as a separate class of intellectual property. It does however protect GIs within the scope of US law. This is done mainly through certification marks established under the trademark law. A certification mark refers to a "word, name, symbol or device" used by someone other than the owner (usually a government body) but conforming to specifications laid down by the owner. The specifications may be in terms of place of origin and/or methods of production.[15] A comparison of the nature of trademarks, GIs and Certification and Collective marks is given in Table 2.[16]

In general, trademarks (for private firms claiming ownership of a name or symbol) cannot relate to a geographical area. Certification marks are a way to avoid such a limitation. But some trademarks using geographical terms are allowed if over time consumers have come to recognize those terms as identifying the product of a particular company or group of producers. Thus the original geographical descriptor has taken on a "secondary meaning" or an "acquired distinctiveness" that can indeed be protected by a trademark. Many such trademarks have been in use for some time and are considered by the US as fulfilling their TRIPS obligation to protect GIs.[17] Neither trademarks nor GIs can be registered for "generic" names are those that have passed into general usage and lost their direct link with their region of origin.

In addition, GIs could be protected under US law by Collective Marks. A collective trademark can be granted to the members of a "collective" for use by its members. The collective does not sell goods but may advertise or promote goods produced by members of the collective.[18] The collective holds the title to the mark on behalf of its members. A process of opposition to the inclusion of a collective mark is specified by law, and the cancellation of existing marks can result from disuse or misuse.

Wine is protected by a somewhat different method. Appellations of origin are registered and protected, both those relating to US regions and to foreign countries. An appellation is required when the wine is labeled with a grape varietal designation, when it carries a vintage date, when it is called "estate bottled" or when it uses one of seventeen regional names (such as Burgundy or Champagne) but does not emanate from that region.

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[14] The US also has a problem of inconsistent state regulations of GIs. Though much of the IP legislation is at the federal level (as it impacts on interstate commerce and foreign trade) some states still have their own versions of GI laws that can on occasions conflict with those at the national level.

[15] Certification marks can also relate to production by a group such as a union.

[16] Certification and Collective marks share many attributes in common and are combined in the table.

[17] In addition, a GI can be protected in the US market through common law trademark law without registration. Cognac is a common law (unregistered) certification mark in the US. It is not generic, as consumers identify it with spirits from a region of France.

[18] There is also the possibility of establishing a collective membership mark that is used solely to identify producers as members of the collective (such as a union), but not used to identify the product. This form of protection would seem to be not suited to the direct protection of GIs.

Trademarks differ from GIs in that they apply to particular firms. As such they are even more restrictive, as they do not allow new producers within a geographic zone to enter the market. Most trademark legislation pays little attention to the need to provide consumer information, being more concerned with conditions of competition. And trademarks are essentially a private sector tool, with public sector help to enforce them, whereas the European style GI is much more an instrument of public policy. So conflicts can easily arise between the two systems, even if both respond to similar pressures and have similar aims.

In a recent article, Hayes, Lence and Babcock (2005) have discussed a variant of GI protection that they call Farmer Owned Brands (FOBs).[19] The concept attempts to retain the market power aspects of trademarks (that the owner can control supply) but extend this to a group of producers who share a marketable attribute. The key to the success of FOBs would be the granting of a degree of supply control to the group: they would be responsible for limiting output and controlling abuse. The government would provide legal cover for such groups. The encouragement of FOBs in the US is suggested as a way that US farmers can gain some of the rents that their EU counterparts are enjoying. But supply control even at the local level raises some sticky issues. The power to raise prices by limiting output of a differentiated good where the differentiation depends on convincing consumers of a quality attribute may be limited. Rents may decline rapidly as competition among "local" producers intensifies. In the end, the best strategy may be to expand supply and extend marketing efforts to gain some economies of scale while maintaining the product quality.

[19] They credit a previous article by Hayes, Lence and Stoppa (2004) for the concept.

Table 2: Comparison of Trademark Protection and GIs

	Trademarks	Geographical Indications	Certification and Collective Marks
Identifier	Identifies a manufacturer	Identifies a place of origin	Identifies quality sometimes linked with place of origin
Intention	Reflects human creativity	Reflects climate and soil and "other characteristics"	Reflects certification of product quality or member of collective
Owner of right	One producer	Ownership by state or parastatal on behalf of all producers in area	Owner of mark not allowed to produce but can promote
Means of protection	Private firms protect trademark with help of courts: no public intervention	Public agencies protect GIs, sometimes complicated by multiple producers	Protection of certification by public agency: collective marks by collective
Transferability	TM can be sold or licensed	GI cannot be sold or licensed	Not transferable
Registration	Self-declaration: no reputation necessary for registration	Registered by public authority: reputation necessary	Request for certification by producer groups must show quality
Cost	Expensive for small producers	Inexpensive for small producers but not for large groups	Inexpensive
Extended protections	No protection against modifiers of translations	Protection for modifiers and translations	Certification should be unambiguous
Conflicts	Cannot contain GIs (unless grandfathered) if consumers might be misled	Can coexist with Trademarks and Certification and collective marks	Can coexist with both GIs and Trademarks
Duration	Trademark permanent for life of owner	Continuous as long as conditions do not change	Often subject to renewal of collective and certification marks

Source: Author, based on material from the USPTO and the EU Commission

As in the case of the US, the US has not been against the incorporation of GI protection in trade agreements. Every regional and bilateral trade pact since the North American Free Trade Agreement (NAFTA) has included some provisions for mutual protection of particular US GIs, such as Tennessee Whiskey and Bourbon, and the corresponding national favorites from the other country. Moreover, the intellectual

property rules in US trade agreements tend to be more strict than are the TRIPS provisions. So one could imagine a web of bilateral agreement protecting US GIs not unlike those that the EU is negotiating.

The differences in the basic approach to the protection of GIs between the EU and the US have led to an interesting and unstable situation across the Atlantic. EU GIs get protection in the US market through the application of trademarks. But US GIs are not given protection in the EU. The WTO case described below arises largely from this difference, though it could be that the underlying commercial and political tensions would have surfaced in some other way.

International Agreements on GIs

As a consequence of the heterogeneity of national regulatory systems, protection of Geographical Indications has been the subject of bilateral and plurilateral agreements for over a century.[20] The most important of these was the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (the Lisbon Union) negotiated in 1958 and revised in 1967. The Lisbon agreement has been signed by 22 countries, many of them in Europe, though not by the European Union. The signatories to the Lisbon Union agree to mutual protection of each other's GIs, so long as they are protected in the home market and included on a register kept by the World Intellectual Property Organization (WIPO).

The coverage of GIs by product group and the countries that are holders of those rights (Table 3) indicates where the most enthusiasm for the Lisbon Agreement has resided. France has used the notifications to WIPO for its wines, spirits and cheeses, as has Cuba for cigars and the Czech Republic for beer. So as a comprehensive framework for global protection of GIs the Agreement has not been a notable success. This accounts in part for the determination of the EU to push for better coverage in the Uruguay Round.

Other conventions cover cheeses (the Stresa Convention) and olive oil and table olives, but these two have even more limited membership (Josling, Roberts and Orden, 2004, p. 134).[21] When discussions began about the inclusion of intellectual property protection in the trade rules of the GATT system, the opportunity presented itself for a formalization and strengthening of these previous conventions. The inclusion of GIs in this discussion was at the strong suggestion of the EU and Switzerland, reflecting their own use of this type of legislation and their willingness to share their experiences with others. The TRIPS discussions built on the earlier IP conventions, and many of the provisions of the Lisbon Agreement are incorporated in the TRIPS text on GIs, though the earlier agreement is not specifically mentioned.

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[20] GIs were included in the Paris Convention for the Protection of Industrial Property of 1883. The 1967 revision of the Paris Convention still covers some of the interpretation of GI provisions in TRIPS.

[21] The International Convention for the Use of *Appellations d'Origine* and Denominations for Cheeses (Stresa Convention) has seven signatories, including Australia, Switzerland and five EU members. The International Agreement on Olive Oil and Table Olives has ten signatories from North Africa and the Mediterranean region as well as the EU and its members.

Table 3: Distribution of Lisbon Agreement Appellations

Product	Registration		Top Holder	
	Number	Percentage	Country	Percentage
Wines	470	61	France	81
Spirits	73	10	France	82
Cheeses	50	7	France	74
Tobacco	33	4	Cuba	100
Mineral Water	17	2	Czech Republic	82
Beer	14	2	Czech Republic	93

Source: Rangnekar (2004)

TRIPS

The inclusion of the protection of GIs in the negotiations in the Uruguay Round on trade-related intellectual property issues has essentially transformed GI issues from national, bilateral or plurilateral matters to the multilateral stage.[22] The TRIPS Agreement was a part of the "single undertaking" of the WTO and thus applied to all members. Importantly, its provisions were backed up by the strengthened dispute settlement procedures of the WTO, encapsulated in the Dispute Settlement Understanding (DSU). The supervision of the TRIPS agreement was entrusted to a new TRIPS Council, and left the WIPO with a smaller role in overseeing IP issues.

The TRIPS Agreement incorporates GIs by requiring member states to "provide the legal means for interested parties to prevent" the use of any means "in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner that misleads the public as to the geographical origin of the good," as well as any use "which constitutes an act of unfair competition." (Article 22:2) The same article continues by enjoining Members to refuse or invalidate a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if the use of the indication in the trade mark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin."[23]

Wines and spirits are singled out for a more comprehensive level of protection. This additional protection was at the request of the EU, and is generally considered to have

[22] The definition of GIs is given in Article 22:1 of the TRIPS, as follows:

"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."

[23] Section 4 of Article 22 guards against a GI that is literally true but falsely represents to the public that the goods originate in another country.

been a concession by exporters who were unconvinced by the need for such measures in return for restraints on EU subsidies (IPC, 2003). Article 23 stipulates that each Member shall provide legal protection for geographical indications "even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like." (Article 23:1) No mention is made of misleading the public or unfairly competing within Article 23: as the Article is headed "additional" protection, the presumption is that no such conditions are required for GI protection for wines and spirits. Moreover, the scope for allowing "generic" exceptions, where a geographical name has become widely used for a type of product regardless of origin, is much narrower for wines and spirits. From an analytical viewpoint this raises the obvious question as to what is the objective of tighter rules on GIs for wines and spirits? It is less easy to consider them as protecting the consumer. Consumers may still gain useful information on quality of wines and spirits from a protected geographical appellation, but if such names can be protected even when there is no attempt to mislead then one could conclude that the rents to growers in the protected regions are more of an influence than consumer information.[24]

But that Agreement left some loose ends that have been difficult to tie. The first has been to define geographical indications in a way that would give guidance to a country attempting to comply. Several definitional problems have been raised which may eventually have to be decided by a Dispute Settlement Panel. These include the issue of whether a GI can be a country name as opposed to a region within a country. Excluding such GIs would appear to limit their use for small countries or cases where the quality is considered to be the result of widespread local skills (such as Thai silk or Canadian Whiskey). Including such GIs could lead to unjustified fragmentation of the market along country lines and pose significant challenges to the WTO rules based on the concept of "like products". The EU has challenged GIs based on countries that no longer exist or have changed their names (Ceylon tea would thus not be covered). But this again goes against the consumer information justification, since the reputation built up by a particular project is not going to be affected by a political name change. Plant varieties pose another problem, where they refer to geographical regions (Basmati rice) but can be grown in other areas. In the case of wine, provision is already built into the TRIPS rules (Article 24:6) to allow varietal labels to be used in some regions even if that name is claimed as a GI by another country. Protection of "Traditional Expressions" such as "vintage" or "ruby" for port also posed issues of definition: it would seem to be a stretch in the concept of geographically-based quality assurance (Josling, Roberts and Orden, 2004, p. 135).

The intention of the TRIPS, in the area of GIs, was to increase the level of protection given to such property rights within the global trade system. The Agreement itself gives two avenues to pursue this aim. Article 23:4 mandates countries to push ahead with a multilateral register of wines and spirits (see below) and Article 24:1 commits Members to "enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23." Thus the wines and spirits sector is assured of further extension of protection regardless of the economic merits.[25] The

[24] The fact that phrases such as "type" and "imitation" are excluded also suggests that consumer information is not the only justification for the protection.

[25] One could argue that most developing countries do not export wines and spirits that would benefit from such protection in developed countries (though instances exist). But one can also

more significant issue in the longer run is whether to extend the additional benefits given to wines and spirits to other agricultural and food products. Certain countries have been anxious to provide that extra protection in order to be able to develop market reputations that would increase producer income. As with wines, this would shift the emphasis away from the prevention of deception towards the control of competition from other producers. The status of discussions on the extension of Article 23 protections is described later in this paper.

The WTO Panel on GIs

Some of the aspects of the TRIPS provisions on GIs have been the subject of a trade dispute that led to the setting up of a Dispute Settlement Panel. This has given the opportunity to clarify some key issues. The challenge was initiated by the US in June 1999, when the US requested consultations with the EU on the alleged lack of protection for US trademarks and GIs in the EU. Specifically, the US contended that the EU did not accord as much protection to US GIs or similar trademarks as it did to EU producers. Such a situation would be a violation of the basic WTO principle of "national treatment," that holds that foreign and domestic products should be subject to the same rules. It would also violate several provisions of the TRIPS Agreement, which reasserts the right of national treatment in the case of intellectual property protection.

Initially, the US objected to the Regulation 2081/92 governing GIs (except in the wine sector), as amended. This led to inconclusive talks but neither a resolution nor the selection of a panel. But the revision of the legislation in the EU in April 2003 raised more concerns in the US, and this time the US was joined by Australia in the complaint. A panel was requested by the US and Australia in August 2003, and agreed in October of that year. The panel ruled in April 2005 that the EU has indeed failed to give the US trademark holders adequate protection, as required. The main points of the Panel decision, as confirmed by the Appellate Body, are summarized in Table 4.

The outcome of the WTO case managed to give comfort to both sides to the dispute. The EU was able to claim that its GI protection program was not WTO-incompatible as such and the US could point to the fact that the EU was found to have violated WTO articles in the way in which it implemented that policy. The EU will have to change its policy regarding the registration of foreign products in the EU market considerably. Its own GI regime will in essence have to be open to all countries selling GI goods into the EU market. This could over time undermine the strategy of encouraging quality improvements through regional product protection. Having other countries protect EU GIs in their markets, as they are requesting in the current WTO negotiations, would restore some measure of balance in this respect.

The regulations at issue in the WTO case did not apply to wines and spirits. But some aspects of the ruling do relate to this area of trade. The panel report clarified one aspect of the complications of having GI and trademark systems intersect, by considering the issue of the rights to the names Bud and Budweiser. This contentious issue, involving one of the world's largest food-and-drink firms, had been simmering

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argue that the marketing of developed country wines and spirits in developing countries is often controlled by state agencies and that the cost of setting up a GI protection system may not pose too much of a problem nor impact too heavily on poor consumers.

for a century, ever since Adolphus Busch emigrated from Germany to the US and choose a German-sounding name (actually the German translation of a Czech town name) to the dismay of the brewers in that town who had several centuries of experience. When the Czech Republic emerged from the blanket of central planning and tried out the competitive marketplace they persuaded four countries to grant GI status to Budweiser as well as its Czech language equivalent. The EU took over this protection when the Czech Republic joined the EU, and hence had to defend its actions when the US challenged the EU Regulation.[26]

Table 4: Summary of WTO Panel ruling on GIs

Issue	Ruling
Violation of Article III: discrimination against non-EC firms and producer groups	EC GI regulation discriminates against non-EC persons and products. EC cannot deny protection on the grounds that the foreign government does not grant "equivalent protection" nor can the EC make protection conditional on "reciprocal" protection in another country
Violation of Article III: interpretation of process of challenge of GIs by foreign firms.	Non-EC firms should be able to register and challenge GIs directly without requiring intervention by their governments. Private rights holders should receive protection under domestic law without needing the intervention of their own government.
Violation of Article 16.1 of TRIPS dealing with potential conflicts between trademarks and GIs	EC regulations should allow holders of pre-existing trademarks to prevent confusing use of geographical indication. The EC argument that TRIPS allows for co-existence of GIs and pre-existing trademarks but limits trademark holders' rights was rejected by the panel. The EC should take steps to avoid registering GIs where there is a "relatively high" likelihood of confusion with a trademarked product. This protection against confusion was specifically extended to the registration of GIs that used a translation of a trademarked term.
Source: Author, based on WTO panel report	Note: Complain dealt with GIs for products other than wines and spirits, which are covered by different EU regulations.

[26] Under the TRIPS Agreement, trademarks that overlap with GIs are granted protection. The EU was thus, in the view of the US, delinquent in not protecting the Bud and Budweiser names. They could register the Czech name as a GI but not its German translation.

The EU-US Wine Accord

At the same time as the WTO panel was deliberating in Geneva over the conformity of the EU GI system for (non-wine) agricultural products, the US and EU were negotiating a bilateral agreement on wines. The disagreements over wine trade, in both directions had simmered for twenty years. The US wine industry had complained that the EU had not recognized their viticultural practices as consistent with EU regulations, though the EU authorities had granted temporary exemptions for some years. The main complaint of the EU was that third country wines were being allowed into the US with labels that used names that the EU considered GIs. At issue were a number of "semi-generic" terms such as Burgundy and Chianti that had been legally used by non-European wine in the US market. Both of these trade irritants were resolved in the Wine Accord of September 2005. The main provisions are shown in Table 5.

In one respect the US-EU wine accord is not directly related to the TRIPS. Trade restrictions based on different wine-making practices and the issue of simplification of wine certification are covered by the Sanitary and Phytosanitary (SPS) and the Technical Barriers to Trade (TBT) Agreements, both parts of the WTO. But the aspects of the Accord that resolve labeling and issues, including the tightening up of semi-generics, the recognition of certain terms on labels and the agreement on certain names of origin certainly range into TRIPS territory. In fact, the Accord could go some way to helping along the talks on the Multilateral Register.

The Politics of GIs

Economic questions of the benefits that stem from GI protection and the legal means to coordinate this protection among trading countries are each conditioned by the political realities of trade relations and the domestic interest groups behind national positions. This section considers the current discussions in the WTO regarding GIs and the positions of the two main protagonists, the US and the EU, along with the interests of the developing countries.

The EU Policy Position

The EU position on the importance of a strong system of GI protection has been both consistent and insistent. From the inclusion of GIs in the TRIPS to the argument that extension of GI protection is of vital importance to its export industries, the EU, along with Switzerland and a handful of other countries, have kept the issue alive. The link with the agricultural negotiations is more political than procedural. The EU introduced the notion early on in the agricultural talks that issues such as GIs, multifunctionality and animal welfare be included as integral parts of a package. Animal welfare has essentially dropped from the scene as it has been accepted that regulations such as those adopted or proposed by the EU for its own market were unlikely to cause trade difficulties, as they tended to increase costs in Europe. Multifunctionality also declined in importance as an issue once every country adopted the rhetoric and the EU suggested that green box subsidies would be adequate to meet these objectives. But strengthening protection of GIs have remained as a potential

"victory" for the EU to soften the blow of ending export subsidies, cutting tariffs and reducing trade-distorting payments for farmers.[27]

Table 5: Main Provisions of the US-EU Wine Accord

Issue	Agreement
Wine-making practices	EU agreed to accept all existing US wine-making practices: US agrees to continue to accept EU practices
Certification	EU will simplify certification procedures: US will exempt EU from new certification procedures
Semi-generic names	US to limit use by non-EU producers of semi-generic names on Imported wines
Terms on labels	EU will accept some terms on label of imported US wines ("chateau", "vintage", etc.). EU agreed to allow names of certain grape varietals subject to 75 percent content, and names of origin subject to the same limit
Recognition of names of origin	US and EU agree to recognize some existing names of origin
Process labels	EU and US agree not to require labeling of wine-making techniques not related to health and safety
Consultation process	Consultation mechanism set up: continuation of talks in a second phase agreed

Source: Author, based on USTR and EU Commission descriptions of the agreement

The encouragement of such designations has become an integral part of the gradual transition of the CAP from supporting commodity markets to allowing producers to market goods to satisfy consumer tastes. There is little doubt that a quiet revolution has been taking place in EU agriculture toward quality and marketable goods, promoted by public policy but also resulting from a change in awareness on the part of farmers as to how to react to shrinking markets for undifferentiated temperate-zone commodities. Producers outside the EU must welcome this change if it allows more open markets. But the dilemma is that higher levels of GI protection are being offered to European farmers as a compensation for (or alternative to) price supports. So other countries must make a choice as to whether to go along with the EU package of lower

[27] Early on in the negotiations the issue of introducing the Precautionary Principle into the Sanitary and Phytosanitary Agreement was an important part of the EU position. That too has been dropped as the support for the EU position waned.

tariff barriers and subsidies in exchange for market conditions that tend to favor the sale of higher-value European farm product on foreign markets.

The EU continues to include GIs as a part of market access discussions within the agricultural talks. The October 28 paper presents some specific suggestions. These include:

- The extension of Article 23 protection to all products. Some provision for existing trademarks that used a GI would be made.
- A multilateral system of notification and registration of GIs would be established. This would include all products, not just wines ands spirits, and have legal effects in both participating and non-participating countries.
- The use of a limited number of well-known GIs in use in "third countries" would be prohibited. This would remove some of the exceptions contained in Article 24 of the TRIPS.

The bundling of the multilateral register for wines and spirits with the extension of Article 23 protection for all products leads logically to a broader register. But the difficulty of agreeing to the concept and negotiating the details would seem to be formidable.

The US Policy Position

The US, along with Australia and Canada, has tended to take a more skeptical view of GIs as a form of intellectual property. These countries have tended to argue that existing provisions are adequate. They see added protection as either unnecessary or undesirable, blocking competition from new sources of foods and giving an advantage to European producers.

The US has used its weight in WTO talks to effectively curb any discussion of the GI issue in the agricultural part of the Doha Round. It takes the view that this is not a market access issue, as claimed by the EU, and that the mandate for negotiation of a register was clearly given to the TRIPS Council. It has taken a full part in those talks, as discussed below, and is prepared to fulfill the objective of those talks to facilitate the protection guaranteed under Article 23 for wines and spirits. But it argues that there is no mandate for the extension of article 23 protection to other products and opposes such an extension as unnecessary.

One issue that is politically important in the US is that of the reversion of certain names from "semi-generic" status to protected GIs owned by the EU (the issue is known as Clawback). Several large companies have a financial stake in this matter, and this tends to drive some of the stiff resistance in the US to the EU approach.

The politics of GIs in the US is complicated by the fact that several groups do in fact see merit in more protection of local foods and beverages. One example of this potential division in the US industry occurred when a group of important wine producers met in California in July 2005 and issued a "Napa Valley Declaration of Place". The intent was to avoid the use of generic labels devoid of geographical meaning. Such a call might have been expected from French producers but not from

those in the New World.[28] Perhaps the attraction of GIs, and local marketing initiatives generally, may pick up in the US as the agricultural sector is forced to gain more of its revenue from the market.

GIs in the WTO Doha Round

The treatment of GIs in the Doha Development Agenda is complicated by the various views as to where and what should be negotiated. On the one hand, countries have agreed to use the TRIPS Council meeting in Special Session to continue the negotiations mandated in Article 23:4 to develop a registry for wines and spirits. These negotiations began in July 1997, though no agreement has yet been reached. On the other hand several countries (the EU in particular) have indicated a desire to extend the additional protection granted by Article 23 to other agricultural products beyond wines and spirits, though no such negotiations have been unambiguously mandated. There is no agreement on whether such talks would be within the TRIPS Council or become an intrinsic part of the WTO agricultural talks. There are clear advantages for some countries in making that link, but equally there has been steady opposition to the idea.

The negotiations on the multilateral registry have revolved around two proposals, one sponsored by the US, Australia Argentina and Canada along with other exporters (and Japan), and the other supported by the EU, Switzerland and a number of European countries (and Sri Lanka). The Joint Paper, as the US-led proposal is called, would set up the register as a voluntary system where notified GIs would be entered into a database. The database would be of use when countries were setting their own GI policies. The EU proposal would have as its main instrument a register that would carry the presumption of protection for all goods registered. Once registered it would be up to countries unwilling to protect the GI to challenge it within 18 months.[29] An additional paper, introduced by Hong Kong, aims to tread a line between these two approaches (see Table 6). But the gap between a voluntary system and a compulsory system (with voluntary membership) has so far proved unbridgeable.

The question of the extension of protection under Article 23 to goods other than wines and spirits has also become contentious. The Doha Declaration attempted to address this issue by incorporating it under the heading of Implementation (of the Uruguay Round agreement) and required the TRIPS Council to report its progress at the Cancún Ministerial.[30] The protagonists have formed into two camps. The one, including the EU, Switzerland and others that support the stronger variant of the

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[28] Other issues are considered in political terms to be of less importance at the moment and even potentially compromising. For instance there is a feeling that WIPO can talk about traditional knowledge but it would not be appropriate in the more formal setting of the WTO.

[29] The documents containing these proposals are TN/IP/W/5 and TN/IP/W/6 (collectively the joint paper) and IP/C/W/107/Rev.1 and TN/IP/W/3 (the EU proposal and supporting position). The stages of the negotiations are explained in the WTO Backgrounder on the website.

[30] There is an arcane disagreement among countries as to whether the implementation issues are part of the old round (and hence have been paid for) or part of the new round (and hence need to be integrated into the final package. Those favoring an extension of GIs tend to hold the former position, as they would not have to bargain anew for agreements already reached (though not yet implemented).

multilateral register for wines and spirits, but also including Thailand, argue for extension. The other camp, including many of those opposed to a compulsory wine and spirit register, argue that existing levels of protection are adequate and that there is little to be gained by impeding the natural spread of food cultures and habits that accompany movement of people. The July Framework Agreement (WTO, 2005) directs the good offices of the Director General to be used to break the deadlock, and to report progress to the Trade Negotiating Committee. As one gets closer to the final deals that need to be fashioned, the GI issue will no doubt play a significant role in the balance of advantage that countries will seek from the Round.

Developing countries and the GI issue

What stake do developing countries have in the resolution of the GI issue? Though it is common to see the trade tensions in terms of Old World and New World producers, this is not always accurate. Just as with protection of farm incomes through commodity market intervention, countries are arrayed along a continuum from strong protection of GIs to weak or no protection. Domestic protection varies from strong in Europe to weak or non-existent in many developing countries. So developing countries will be impacted by the outcome of the decision as to whether to push for higher levels of protection for GIs and whether to require this level of protection for all countries.

Until recently one could have made the generalization that the developing countries have tended to think of GIs as of benefit to developed countries who own most of the rights to such names. But the benefits of gaining some of those rents for developing country exporters is not unattractive. The possibility of protecting GIs becomes more attractive if it can be linked with improvements in quality and more effective marketing. So the somewhat static nature of some GIs as preserving historical methods may be overcome if new techniques and processes can be harnessed to improve local foods and beverages. And the rents could under the right circumstances provide significant income to traditional farmers and others whose skills are not rewarded in local markets.

This argument has been developed by Broude (2005) in relation to the protection of culture, a longstanding and contentious issue in the WTO.[31] Broude argues that cultural protection could provide the necessary justification for the extension of Article 23 protection to products other than wines and spirits. The essence of the argument is that cultural identity, and the pride that comes from recognition of excellence in a particular manifestation of traditional local knowledge, has a public good dimension. He sees the possibility of "valorizing the cultural expression embodied in the [product] and converting it into a commercial premium." He also argues that developing countries could in this way redress the balance that was upset when the developed countries managed to get additional protection for wines and spirits. However, Broude concludes by suggesting that the actual economic benefit of extension of protection may not be high, and that cultural protection can also have negative as well as positive effects.

[31] The protection of cultural goods, such as films, delayed and complicated the final stages of the Uruguay Round negotiations.

Table 6: Comparison of Joint (US plus others), EU and Hong Kong WTO proposals

	Joint Proposal (US and others)	EU proposal	Hong Kong proposal
Proposal document	TN/IP/W/8	TN/IP/W/10	TN/IP/W/11
Establishment	Establish a new "system" for wines and spirits	Annex new text to TRIPS Article 23.4	
Participation	Voluntary, with written notification	Voluntary, with members electing to participate by notifying GIs	Voluntary, with obligations only on those who choose to participate
Notification	Notify wines and spirits originating in that member	Notify all GIs that are protected in home market	Notify wines and spirits protected in home market
Registration	Enter notifications in a Database	Enter notifications in a Register; Reservations to be lodged within 18 months; Notification of Trademarks containing GIs; Articles 24.4 and 24.5 not allowed as a basis for reservation	Enter notifications in a Register
Legal Effect	Consult database when taking decision on protecting GIs	Prima Facie evidence of ownership; notification of Trademark applications containing GIs	Prima Facie evidence of ownership; Articles 22-24 still available for reservation
Non-Participants	Encouraged to consult Database	Cannot refuse registration; notification of conflicting Trademarks; no effect in LDCs until they fully adopt TRIPS	No obligations for non-participants
Updating			Ten year validity, renewable
Review		Review by competent committee	Review after four years
Administrative costs		System of basic and individual fees to cover costs; assistance for developing countries to meet costs; no costs for LDCs	Full cost recovery

Source: Abridged by author from Secretariat document TN/IP/W/12, 14 September 2005

A similar tack is taken by Rangnekar (2004) in an examination of the socio-economic effects of GI protection in particular in Europe. GI's, he claims, are at the "intersection of culture and geography" (p. 16). The local product leads to the recognition of local culture and may have beneficial impacts on tourism. It is certainly true that the link between local foods and wines (and handicrafts) and the tourist industry is strong, but the case for GI protection worldwide may not be so convincing.

The argument for protecting and rewarding the knowledge of indigenous people also has a resonance with those concerned about the homogenizing effects of globalization and by extension of trade in foodstuffs.[32] The case is based on the fact that GI protection tends to keep knowledge in the public domain, in contrast to trademarks that benefit private corporate entities. But that knowledge is not easy to protect if it has economic benefits: the product may be reproduced elsewhere if the link with the place is not essential. GI protection is not necessarily any more of effective way of rewarding traditional knowledge than it is of guarding local culture.

The more convincing link with development objectives is that the rents from GIs are essentially kept in the locality, though of course non-locals can own local businesses. There are potentially large rents to be had from the increasing discernment of consumers in their food buying habits as incomes increase. Developing countries can usefully study the successful adaptations of the food industry in more advanced nations to see how to tap into this additional revenue stream. In some cases protection of local names is a useful part of that strategy. In others it is less significant that quality assurance and regularity of supplies. Brand names and trademarks can be equally effective and maybe more flexible.

An argument against extension, and in particular a multilateral register for all GIs that would be mandatory, is the increased administration and regulatory cost. The experience with the TRIPS agreement is fresh in the minds of trade negotiators. Setting up a whole new bureaucracy to administer GI protection for products produced in a few European countries cannot seem like a high domestic priority. But for those who want to participate in the global marketplace for local foods may have to pay that price.

Possible Resolutions

Whatever the underlying pressures, GI protection has been justified primarily as a consumer information device. Protection of GIs is to the benefit of those producers that are in a position to meet the quality demands of consumers and who can maintain such a reputation. The implication of this is that the trade system could deal with the issue primarily as a consumer information question, even if producers have typically been the driving force behind protective regulation. Attempts to protect GIs where there is no evidence of consumer deception or lack of information would have a low priority on these grounds. On the other hand, in a world where trade in differentiated products is expanding and producer incomes from satisfying consumer desires for quality and variety in foodstuffs are replacing subsidies from government budgets,

[32] It should be noted that protecting indigenous knowledge can imply discriminating against knowledge carried by immigrants. This is particularly the case when these migrants attempt to export goods back to their country of origin.

assisting the market in meeting such demands is both politically wise and economically defensible. The question is how to balance these two objectives without encumbering the trade system with an unmanageable and bureaucratic regime?

Three GI issues are at the present on the international agenda: the establishment of a multilateral register for wines and spirits, the extension of protection beyond that of consumer deception for goods other than wines and spirits, and the resolution of the conflict between trademark protection and GI protection in the Transatlantic marketplace.

The logic of the case for GIs suggests a framework for evaluating progress in each of these three areas. Such a framework could include the following elements:

- Each country should set up a system for its own domestic market tuned to the requirements of its consumers. This implies regulating both domestic and foreign use of GIs to avoid confusion. Where there is little need for such a system it can be subsumed into basic laws against deception. TRIPS Article 22 already mandates such systems. National treatment and non-discrimination would be respected, and be enforceable through the Dispute Settlement process, as currently.
- Importing countries should be able to request the exporters to monitor and enforce the GIs that relate to geographical areas in their own jurisdiction (home-country control).
- Exporting countries with extensive investment in GIs and the establishment of reputation attributes could request importing countries to adopt protection of particular GIs. But there should be no obligation on importing countries to accede to such a request if it felt that its own consumers were not well-served.[33] Non-discrimination would ensure that one exporter's products were not favored over those from other exporters.
- WTO rules would govern the notification of GIs and the adjudication of differences of interpretation. A multilateral register would be established as a simple way of making sure that there was consistency among the names and the regions: importers would essentially choose from the list, but not be obliged to make all-or-nothing decisions on participation. The existence of a name on the list would act as a rebuttable presumption that the GI was consistent with the TRIPS definition and not in conflict with other GIs or with trademarks.
- Developing countries would participate as exporters in such a system, to the extent that they felt that their exports could benefit from protection in the importing countries. Developing countries could be given an element of Special and Differential Treatment through efforts to encourage such product differentiation based on quality as a way of expanding exports.
- Mutual recognition of national GIs would be encouraged in bilateral or plurilateral agreements notified to the WTO. These would be open to expansion to other members. Protection over and above the level ensured by the TRIPS would not be enforceable through WTO dispute mechanisms.

[33] The agreement to protect an exporter's GIs would be a bargaining chip in opening up the exporting country market to other products of export interest to the importer.

How do the current talks measure up to this framework? The merits of a multilateral register should be assessed in the light of alternatives. At present the main alternative seems to be the negotiation of bilateral GI agreements between the EU and countries that it wishes to encourage into its extended trade system. The US could build a similar network through its own policy of bilateral and regional trade agreements. Perhaps the strongest argument for such a list is that it could make such regional and bilateral agreements much more compatible. In other words the register would substitute for multiple lists. It would be more than a database but less than a compulsory register of all GIs. It would be a menu from which the parties to agreements could choose, with some presumption of prima facie coherence with TRIPS. Such a register could eventually come out of the current debate if there were flexibility in the positions.

The element of mandatory protection of all GIs on the register would seem to be outside the framework. It virtually ensures that there will be "unnecessary" protection in cases where it is not in the interests of the consumers or the country concerned to establish GIs. But the option for a country to declare itself a non-participant in the register system could lead to the other extreme: there might be less protection of GIs in cases where it might be desirable. So participation could be not only voluntary (all countries seem to agree to that) but also selective. The menu of choices would be expanded from the current suggestions.

As to the extension of the additional protection currently granted to wines and spirits, there seems little merit in following down the road of removing the "consumer deception" condition for other products. The protection given to wines and spirits may well be excessive and reduce both competition and innovation at the expense of the consumer.[34] The case for giving additional protection for other products to improve quality and inform consumers should have to be argued on a case by case basis, on grounds that the lower level of protection of Article 22 is insufficient. Such an argument may well be sound in some cases, but this does not imply that such protection be given indiscriminately. In other words, products could attain "article 23" status by means of conscious decision not as an automatic right. Sub-negotiations on particular types of product would be necessary but this would add to the clarity of the process.

The issue of trademarks and GIs may need to be resolved before advances in other areas can occur. On the face of it, administering GI protection through regular trademarks would seem to be an inappropriate policy, and should decline over time. The essence of geographical indications is that a collective property right is given to producers in a region. Collective marks and certification marks seem to be more appropriate forms of protection for such club goods.[35] Existing GIs that have trademark protection could be continued, or the protection be transferred to the common property of the group of eligible producers with compensation. If this were to be accepted then no new geographical terms should be covered by trademarks without at the least establishing that there was not a potential conflict with a GI.

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[34] Eventually, cross-border investment in the wine and spirit sector may render many of these GIs of less political sensitivity. The EU may find itself protecting Australian investment in Europe from competition from European firms marketing wines from Georgia.

[35] The fact that the US protects these other marks under trademark legislation should not be a problem. The difficulties are more with private trademarks that contain geographical terms.

Continuation of different means of legal protection may not be an issue if such "overlap" issues are resolved over time. But innovation in the means of protection can help in blurring the sharp distinctions that polarize international discussion.

Much of the discussion of these issues has rested on a thin empirical base. The economic challenges are many. First, there is a need to find ways to sort out the mix of protectionism and information provision that typifies the arguments behind GIs. This raises political economy issues of mixed-motive policy initiatives (similar to those raised by country-of-origin labeling). Is there a market test for the adequacy of consumer information? Such information given by producers of a regional good could be biased and unreliable. Can one measure the protection given by a GI? It could be that producers underestimate the ability of competing producers to position their goods to offset the local name recognition. How should one regulate GIs in an open economy? Uniform systems have transaction cost advantages, while diversity may satisfy consumer needs better. How do GIs impinge on technology transfer and innovation? Protecting traditional knowledge could stifle innovation. Excessive ties through regulation between quality and location could distort investment decisions. Political linkages with groups with other agendas (such as anti-corporate control of the food system) may lead sound produce-place-quality marketing down a less profitable path. And, ultimately, consumers will constrain the ability of local producers to define meaningful product attributes that reflect the "terroir".

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