
The Debate on Geographical Indications in the WTO

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New rules and mechanisms for the protection of geographical indications (GIs) have been a subject of lively discussion in the current multilateral trading round—the Doha Development Agenda (DDA). Some WTO members advocate stronger multilateral protection for GIs and view progress on the issue as an important *quid pro quo* for advancing negotiations in other areas. Other members favor a less ambitious outcome as part of an eventual Doha Round package, and, in particular, argue that the negotiating mandate on GIs is limited in scope and ambition. Differences do not break along the typical North–South divide associated with intellectual property discussions in the WTO, nor along the lines of some of the main negotiating alliances in the DDA. Proponents of a stronger GI system include, Bulgaria, the European Union, Kenya, India, Sri Lanka, Switzerland, and Thailand. Members favoring a less ambitious outcome include Argentina, Australia, Canada, Chile, Costa Rica, Guatemala, Japan, Namibia, Taiwan (China), and the United States.¹

This note will take stock of the discussion on GIs stands as WTO members prepare for the Sixth WTO Ministerial Conference in Hong Kong in December 2005. It also will put this discussion into a broader economic perspective and highlight some of the key issues at stake.

What are geographical indications?

Geographical indications are signs that link a product to a particular place, such as a city or region. Their use indicates that a product possesses certain qualities or enjoys a reputation associated with its geographical origin.² Many GIs pertain to food products, for which quality is often directly linked to a region's inherent characteristics, such as soil attributes or climatic conditions. But a GI may also reflect certain manufacturing skills or production processes that are associated with a particular place. Box 1 presents examples of geographical indications from around the world.

Governments have long used various legal instruments to protect GIs from misappropriation by nonoriginal producers. Historically, protection was first afforded through consumer protection laws, such as regulations against false trade descriptions. In many countries, GIs have also been recognized as a form of intellectual property—either as part of the trademark system or through dedicated laws for their protection. To obtain protection through the intellectual property system, interested parties must register their GIs with a designated public body.

Box 1. A few examples of geographical indications^a

<i>Country of origin</i>	<i>Products</i>
Chile	Valle del Maipo (wine)
Colombia	Colombian coffee
India	Darjeeling (tea), Basmati (rice)
European Union ^b	Chablis (wine), Ouzo (spirit), Roquefort (cheese), Solingen (steel products)
Mexico	Tequila (spirit)
New Zealand	New Zealand lamb
Sri Lanka	Ceylon (tea)
Switzerland	Swiss watches, Etivaz (cheese)
Thailand	Thai silk
United States	Washington State apples, Idaho potatoes, Florida oranges

a. Not all of the products listed here have necessarily been registered as GIs.

b. Or individual member states.

Economic Considerations

Like other forms of intellectual property, GIs arise as a solution to certain failures in markets for information.³ They are used primarily for products that are known in economics as “search goods” or “experience goods.” Simple commodities, such as wheat and sugar, generally do not command GI protection because they can be produced with a reasonable degree of homogeneity in many locations. Accordingly, consumers need not worry too much about searching for specific quality characteristics. However, products with known quality variations (and therefore differentiated or heterogeneous), do carry significant search costs for consumers. By providing a signal to potential buyers, GIs can lower those costs and make markets more efficient. Such a signal can be particularly important in the case of experience goods, such as wine and cheese, where consumers understand the quality from prior consumption but cannot distinguish quality simply by inspecting the product.

The signaling function of GIs is valuable not only for consumers in the domestic economy, but also for those in foreign countries. In fact, their role in international trade may be greater than in domestic commerce, because informational problems are likely to be more pronounced when producers and consumers are located in different countries.

Conceptually GIs are closely related to trademarks, which identify a product as having been produced by a particular enterprise. Because firms wish to protect the value of their trademarks, and reputation associated with them, they have a strong incentive to produce goods of a particular and predictable quality. Many food

products bear both a GI and a trademark to signal the quality of the geographic origin and the quality of the individual producer.

Trademarks and GIs differ in two significant respects. First, a trademark is usually the property of a particular firm; other firms cannot compete under the same mark.⁴ In contrast, a GI is a piece of property shared by several or many firms. The shared nature of a GI can raise problems of collective action. Free-riding by low-quality producers is one concern, but this is usually overcome by linking the use of a GI to achievement of specific attributes detailed in the GI registration. Still, establishing, defining, enforcing, and jointly marketing GIs requires coordination and can involve nontrivial transaction costs. This explains why GIs are sometimes managed or supported by (quasi-)public institutions, such as the “Consorzio del Prosciutto di Parma” representing producers of Parma ham in Italy (Rangnekar 2004).

A second, related difference is that trademarks do not attach to a location, whereas GIs do. Accordingly, a good protected by trademark can be produced anywhere, whereas at least some significant portion of a good protected by GIs must be produced within the indicated location. It is at this point that conflicts between protection systems can arise, as discussed below.

From the perspective of producers, GIs offer a means of attaching a reputation for quality to a place name that may then be marketed and used on labels. In this context, GIs can encourage firms to add value to their products, either by investing in higher-quality production techniques or by marketing.

Studies have quantified the price premia associated with certain GI-protected products. A 1999 EU consumer survey found that 40 percent of consumers would pay a 10 percent premium for origin-guaranteed products (WTO 2004). Econometric models employing so-called hedonic pricing techniques support the willingness to pay more for GI products. One econometric study found that certain regional designations for Bordeaux wines command a large price premium—as much as \$15 per bottle in the case of the “Pomerol” designation (Landon and Smith 1998). Another such study found that wines with a “Napa Valley” designation were priced 61 percent higher than wines with a “California” designation (Bombrun and Sumner 2003). Evidence for price premia is not limited to wines. Econometric work on the Spanish market for meat products showed, for example, that products bearing the “Galician Veal” label commanded a premium of \$0.21 per kilogram (Loureiro and McCluskey 2000).

From this evidence, there is little doubt that protection through GIs can support significant increases in value-added through premium pricing. In this context, enterprises in some developing countries may be able to gain by using GIs in national and international markets.

Where does the controversy lie?

Like other intellectual property rights, it may be difficult to strike an optimal balance between consumer needs and producer gains in designing GIs. The economic considerations outlined above indicate that one key criterion in assessing the adequacy of a particular GI regime is its ability to reduce consumer confusion and search costs. From this perspective, exclusive rights attached to a GI can be overly strong if they exclude alternative users that could enter the market and compete without confusing consumers.⁴ This is especially relevant for geographical expressions that have evolved as product descriptions in the common language of certain countries—consider, at the extreme, expressions such as “china” for porcelain wares or “parmesan” for hard, dry, sharply flavored cheeses.

Policy-makers’ views on how best to strike a balance in the protection of GIs differ markedly across countries. For example, in the United States nonoriginal producers have been allowed to use GIs on certain products as long as the true geographical origin of the products is made clear. This has given rise to so-called semi-generic expressions (such as “American-made Pecorino cheese”). By contrast, the European Union has a strong set of GI rules that give owners stronger exclusive rights than do U.S. rules. In addition, EU laws protect so-called traditional expressions that describe certain methods of production (such as “ruby” for a class of port from Portugal).

The more lenient U.S. approach to GIs system is arguably more conducive to entry than the EU system. Little systematic evidence exists about whether it may confuse consumers. Complicating an economic assessment of different protection regimes is that certain GI products are likely to have significant status value. Economists view “status goods” as products for which the mere use or display of a particular label confers prestige on their buyers—regardless of a product’s quality.⁶ “Champagne,” “Beluga caviar,” and “Kobe beef” may fall into this category. Use of these GIs by nonoriginal producers may undermine the status value attached to products, eroding the price premia of original producers—even if consumers are not confused about the true origin of their purchases.⁷

As a matter of law, GIs receive protection at the level of national jurisdictions; international conflicts result from different national approaches to protection. In particular, constituencies such as those in the European Union, which hosts many GIs and provides strong protection, view weaker standards of protection abroad as a barrier to their exports. Even if there is little direct competition from producers in foreign countries, standards of GI protection can still matter because they may influence competition from third countries. For example, Singapore’s GI rules affect the extent to which European producers face competition from American producers using semi-generic expressions. To resolve such conflicts, various international agreements for the protection of GIs have emerged over time.

The existing international system for protecting GIs

International rules for the protection of GIs were first established in several intellectual property conventions, notably the Paris Convention (originally signed in 1883) and the Madrid Agreement (originally signed in 1891). However, these conventions were primarily concerned with repressing deceptive indications of origin in international trade and did not provide for harmonized standards. The Lisbon Agreement (originally signed in 1958) went further, requiring signatories to protect “appellations of origin” against usurpation (wrongful appropriation) or imitation and by establishing a system through which signatories to the agreement can register their appellations of origin.⁸ However, only 23 countries have become contracting parties to the Lisbon Agreement.⁹

An important shift in international GI rulemaking was brought about by the coming into force of the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1995. The TRIPS Agreement sets minimum standards of intellectual property protection, which all 148 WTO members as well as countries acceding to the WTO must, in principle, respect.¹⁰ In the area of GIs, it establishes the following rules:

- Members must establish the legal means to prevent GIs from being used by nonoriginal producers in a way that would mislead the public as to the geographical origin of a good or would constitute an act of unfair competition.
- A higher level of protection is reserved for GIs relating to wines and spirits. For these two classes of products, members have to prevent the use by nonoriginal producers of a GI, even where the true origin of the good is made clear or use of the GI is accompanied by expressions such as “kind,” “type,” “style,” or the like.
- These obligations are subject to certain exceptions. For instance, members are not required to protect GIs that were used in good faith before the TRIPS Agreement was signed. Similarly, members are not required to protect GIs that are considered to have become part of the common language.¹¹ Whether a geographical name is considered generic depends on its historical use in the language of a WTO particular member and may require domestic judicial interpretation.

TRIPS provisions on GIs reflect a negotiating compromise reached in the Uruguay Round of trade negotiations. Accordingly, they did not fully satisfy the proponents of stronger GI protection. The European Union, in particular, has pursued stronger protection in the context of bilateral trade agreements and in dedicated bilateral GI agreements. For example, additional obligations for the protection of GIs pertaining to wines and spirits exist in bilateral agreements between the European Union and Australia, Canada, Chile, Mexico, and South Africa. Most notably, these agreements contain lists of specific GIs to which signatories are required to apply

the higher level of protection mentioned above. Several of the European GIs listed—especially for spirits—had been used by local producers; such use had to be (or will have to be) phased out, even though it would likely have fallen under the exceptions of the TRIPS Agreement.¹²

In September 2005, the European Union and the United States concluded an Agreement on Trade in Wines settling certain longstanding disputes on wine names and wine-making practices. As part of this agreement, the United States promised to seek legislative changes to limit the use of 17 semi-generic names—among them Chablis, Champagne, Chianti, Port, and Sherry. However, current use of these names will be grandfathered such that U.S. producers can continue to sell their wines under their present names. In return, the European Union pledged to recognize U.S. wine-making practices, thereby facilitating access of U.S. wine producers to the European market.

Geographical indications in the Doha Development Agenda

Discussions on GIs in the DDA have centered on three elements: the establishment of a multilateral system of registration for geographical indications; the extension of the higher level of protection to products other than wines and spirits; and the protection of product names as established through a list of geographical indications currently used by nonoriginal producers (often referred to as the “claw-back” of GIs).

Table 1. WTO members with more and less ambition to strengthen GI protection

	More ambitious members	Less ambitious members
<i>Multilateral GI register</i>	Bulgaria, European Union, Georgia, Iceland, Mauritius, Moldova, Nigeria, Romania, Sri Lanka, Switzerland, Turkey	Argentina, Australia, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Japan, Mexico, Namibia, New Zealand, Philippines, Taiwan (China), United States
<i>Extension of higher level protection</i>	Bulgaria, Cuba, European Union, Georgia, Guinea, Iceland, India, Jamaica, Kenya, Kyrgyz Republic, Liechtenstein, Macedonia, Madagascar, Mauritius, Morocco, Pakistan, Romania, Sri Lanka, Switzerland, Thailand, Tunisia, Turkey	Argentina, Australia, Canada, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, New Zealand, Panama, Paraguay, Philippines, Taiwan (China), United States
<i>“Claw-back”</i>	European Union	

Source: Based on submissions of WTO members since 2001 (TN/IP/W/3, TN/IP/W/5, TN/IP/W/10, and as summarized by the WTO Secretariat in Document TN/C/W/25).

Table 1 depicts the differential level of ambition of WTO members to strengthen GI protection along these three dimensions. The European Union is generally the member with the greatest ambition on all three, though several other developed and developing countries also see themselves as having offensive interests in the protection of GIs. The group of less ambitious members is often associated with the “New World”—which refers primarily to countries in the Western Hemisphere. However, the group also includes countries in other regions (e.g., Namibia, the Philippines).

The creation of a *multilateral GI register* is the least controversial in that it has an explicit negotiating mandate. The TRIPS agreement called for negotiations to establish such a register for wines, and the ministerial declaration launching the DDA in 2001 broadened that mandate by widening the scope of the envisaged register to include spirits. Several explicit proposals for the design of a multilateral GI register have been put forward, but WTO members were not able to reach agreement by the original 2003 deadline. Substantial differences remain on several features of the registration system, including:

- *Scope of coverage.* The more ambitious members would like the register to cover products other than wines and spirits, whereas other members would prefer to adhere to the more limited negotiating mandate.
- *Legal effect of registered GIs.* According to TRIPS, the purpose of the multilateral register is to “facilitate the protection of geographical indications.” The more ambitious members believe that effective facilitation requires a legal presumption that registered GIs are protected in the territory of WTO member states. Moreover, unless members were to lodge a reservation against a multilaterally notified GI within 18 months, they should not be able to refuse protection of that GI—even if protection was not required by a country’s obligations under TRIPS. Other members believe that requiring WTO members simply to consult the multilateral register when making decisions about registration and protection at the domestic level would suffice in facilitating protection.
- *Legal effect in nonparticipating member countries.* The TRIPS mandate makes clear that participation by WTO members in the registration system will be voluntary. However, under the proposal put forward by the European Union, there would still be a legal effect of registered GIs in nonparticipating member countries. While there would be no legal presumption of protection, nonparticipating members—just like participating members—could not refuse protection of a multilaterally registered GI unless they objected to the notification within 18 months. Other members favor a system in which multilateral registration has no legally binding effect whatsoever in nonparticipating countries. As for the question of *extending the higher level of protection* to products other than wines and spirits, differences of WTO members center on

whether the Doha Ministerial Declaration establishes a negotiating mandate for such a move. Members with more defensive negotiating interests on this issue argue that negotiations can take place only if the WTO's Trade Negotiating Committee so decides, whereas the European Union and other members believe a negotiating mandate exists already.¹³

Substantively, the proponents of extension argue that the current system discriminates against countries that are not significant producers of wines and spirits but that possess valuable GIs on other products that may be subject to usurpation in foreign jurisdictions. This explains why developing countries such as India, Kenya, Pakistan, and Thailand support extension. The opponents of extension contend that certain uses of GIs by nonoriginal producers can improve consumer choice, as long as the true origin of products is made clear. They also argue that there is no proof that the existing level of protection under TRIPS is insufficient. Finally, New World producers have pointed out that, in many cases, production methods and product names were brought in by immigrants decades ago. Some reference to the original geographical names is therefore justified and should not be regarded as usurpation.

Probably the most controversial element in the current discussions is the “*claw-back*” initiative. In 2003, the European Union advanced a list of geographical names for which it wished to prohibit use by nonoriginal producers—mirroring the approach taken in some of the European Union's bilateral agreements. Many of the names on the list do not enjoy GI protection in certain jurisdictions, as they are considered to be generic terms falling under the common-language exception of the TRIPS Agreement. The European Union (acting alone) put forward the claw-back initiative in the DDA's agricultural negotiations, and not in the TRIPS Council—the WTO forum normally responsible for trade-related intellectual property issues. That move has been criticized by some members because the negotiating mandate on agriculture set by the Doha Ministerial Declaration does not mention GIs.¹⁴ The European Union's GI list includes wines and spirits as well as other products such as Gorgonzola, Parmigiano Reggiano, Prosciutto di Parma, and Roquefort. If accepted, it would imply new obligations even for those countries that have entered into bilateral agreements on wines and spirits with the European Union.

Conclusion

GIs may become a contentious topic in the run-up to the Hong Kong WTO Ministerial Conference in December 2005. The European Union and other European countries view progress on GIs as an important *quid pro quo* for improved market access and reduction of subsidies in agriculture. The Hong Kong Ministerial Conference may be the moment to strike a bargain, as one of its key aims is the conclusion of modalities for the DDA's agriculture negotiations. At the same time,

WTO members remain deeply divided on the three elements outlined above. Progress on any one of them would likely require significant movement by those members with opposing interests, which seems possible only with substantial political impetus.

From an economic perspective, the “claw-back” of geographical names currently not receiving protection would likely bring the greatest and most immediate economic benefit for the European Union. But it would also require the largest adjustments by nonoriginal producers who currently use European GIs. The scale of adjustments remains uncertain, however. For example, while nonoriginal producers may experience a temporary decline in market share, the experience of Australian wine producers suggests that the cessation of semi-generic terms under the Australia-EU bilateral agreement did not harm local products. To the contrary, it has been argued that the rebranding of affected products and associated marketing efforts provided a boost for Australian producers.¹⁵ Aside from such anecdotal evidence, there is little systematic evidence on the size of adjustment costs. Similarly, there is little evidence about the effects—in direction and size—of a GI “claw-back” on consumer welfare.

Some developing countries stand to gain from stronger WTO rules for GI protection. However, benefiting commercially from GIs requires complementary efforts to identify valuable GIs and to build an international reputation for them. Many developing countries have only recently begun to develop national GI systems; it will take time before substantial commercial benefits will arise. Meanwhile, there are difficult questions to resolve in delineating the geographic boundaries of a GI, defining its quality attributes and other characteristics, establishing quality control mechanisms, and collectively managing and promoting an indication. In addition, there is the risk that certain rent-seeking producers may use GIs as devices for excluding competitors capable of producing goods of comparable quality. Addressing these challenges will require concerted efforts regardless of what emerges from the GI discussions in the DDA.

Notes

1. This Trade Note was written by Carsten Fink, Senior Economist at the World Bank Institute and Keith Maskus, Professor of Economics and Chair of the Economics Department at the University of Colorado in Boulder. Comments by Antonio Berenguer, Lauro Locks, Wolf Meier-Ewert, Pedro Roffe, Maximiliano Santa Cruz, Christopher Spenneman, Thu-Lang Tran Wasescha and David Vivas are gratefully acknowledged.

2. The WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights defines GIs as “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.” There are two instruments related to GIs: indications of source and appellations of origin. Indications of source are broader than GIs, in that goods do not necessarily have to exhibit a quality, reputation, or other characteristic attributable to its geographic origin. Appellations of origin are narrower than GIs in that they necessitate a link to quality or some other special characteristic directly attributable to a good’s geographic origin. Reputation alone is insufficient.

3. The failure of the market to provide for an efficient allocation of resources when consumers are unable to assess the quality of products was first observed by Akerlof (1970).

4. Exceptions are so-called collective marks and certification marks, which can be owned by an association of companies. In fact, these types of marks are used in some jurisdictions as an instrument for the protection of GIs.

5. Josling (2005) argues that an overly strict GI regime that prohibits the use of place names in ways that have no possibility of confusing consumers may be considered protectionist from a trade policy perspective.

6. Fink and Smarzynska (2002) discuss status goods more extensively.

7. Such an outcome is not certain, however. It is equally possible that clearly distinguishable and low-quality copycat products enhance the perceived exclusiveness of the original products.

8. See note 2 for the difference between appellations of origin and GIs.

9. The 23 countries are Algeria, Bulgaria, Burkina Faso, Congo, Costa Rica, Cuba, Czech Republic, Democratic People's Republic of Korea, France, Gabon, Georgia, Haiti, Hungary, Israel, Italy, Mexico, Peru, Portugal, Republic of Moldova, Serbia and Montenegro, Slovakia, Togo, and Tunisia.

10. Least developed countries (LDCs) are exempted from most TRIPS disciplines—including the specific obligations on GIs—until December 31, 2005, although this deadline can be postponed upon duly motivated request. The two LDCs that have acceded to the WTO since 1996—Cambodia and Nepal—were granted a transition period until December 31, 2006.

11. In addition, WTO members are not required to protect foreign GIs that are not protected in their country of origin. Thus, any country seeking to promote a GI has to provide domestic protection before seeking to have the indication protected internationally. For an in-depth discussion of the TRIPS provisions on GIs, see chapter 15 in UNCTAD-ICTSD (2005).

12. For a more detailed discussion of the European Union's bilateral agreements, see Vivas and Spennemann (2005).

13. According to the ministerial declaration launching the DDA, the question of GI extension is considered an "outstanding implementation issue" to be dealt with "as a matter of priority" by the TRIPS Council, "which shall report to the Trade Negotiations Committee [...] by the end of 2002 for appropriate action."

14. The framework for agriculture negotiations adopted by WTO members in July 2004 identifies GIs as an issue "of interest but not agreed."

15. See Battaglene (2005). In addition, Schamel and Anderson (2003) find that regional origin has become a major determinant of prices in the Australian wine industry, with price premia averaging about 31 percent for wines carrying Australian GIs.

References

- Akerlof, G. A. 1970. "The Market for Lemons: Qualitative Uncertainty and the Market Mechanism." *Quarterly Journal of Economics* 84: 488–500.
- Battaglene, Tony. 2005. "The Australian Wine Industry Position on Geographical Indications." Paper presented at the Worldwide Symposium on Geographical Indications in Parma, Italy, June 27–29.
- Bombrun, Helene, and Daniel A. Sumner. 2003. "What Determines the Price of Wine?" AIC Issues Brief 18, University of California, Davis.
- Fink, Carsten, and Beata Smarzynska. 2002. "Trademarks, Geographical Indications, and Developing Countries." In *Development, Trade, and the WTO: A Handbook* (pp. 403–12), ed. Bernard Hoekman, Aaditya Mattoo, and Philip English. Washington, DC: World Bank), pp. 403–41.
- Josling, Timothy. 2005. "Geographical Indications: Protection for Producers or Consumer Information?" Unpublished paper. Stanford Institute for International Studies, Palo Alto, CA.
- Landon, Stuart, and Constance E. Smith. 1998. "Quality Expectations, Reputation, and Price." *Southern Economic Journal* 64(3): 628–47.
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- Loureiro, Maria Luz, and Jill J. McCluskey. 2000. "Assessing Consumer Response to Protected Geographical Identification Labeling." *Agribusiness* 16(3): 309–20.
- Rangnekar, Dwijen. 2004. "The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe." UNCTAD-ICTSD Project on IPRs and Sustainable Development, Issues Paper 8. www.iprsonline.org.
- Schamel, Günter, and Kym Anderson. 2003. "Wine Quality and Varietal, Regional and Winery Reputations: Hedonic Prices for Australia and New Zealand." *Economic Record* 79(246): 357–69.
- UNCTAD-ICTSD. 2005. *Resource Book on TRIPS and Development*. Cambridge: Cambridge University Press.
- Vivas-Eugui, David, and Christoph Spennemann. 2005. "The Treatment of Geographical Indications in Recent Regional and Bilateral Free Trade Agreements." In *The Intellectual Property Debate: Perspectives from Law, Economics and Political Economy*, ed. Meir Pugatch. Cheltenham, England: Edward Elgar.
- World Trade Organization. 2004. *World Trade Report 2004*. Geneva: WTO.

