

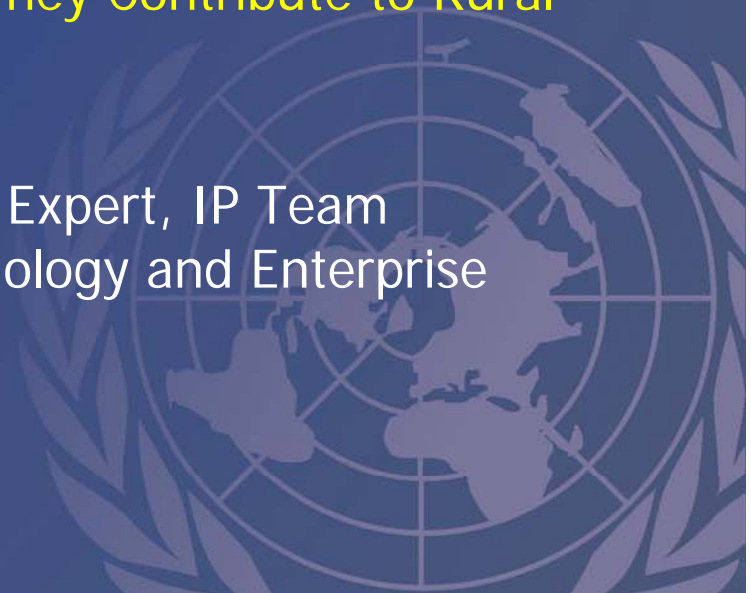


Institutional and Legal Framework for GIs: Needs and Governance

Discussion Points

FAO/SINER-GI Meeting on Sharing Views on Quality Products
Linked to Geographical Origin: How Can They Contribute to Rural
Development?

Christoph Spennemann, Legal Expert, IP Team
Division on Investment, Technology and Enterprise
Development
UNCTAD





Basic requirements for GIs domestic legal frameworks (1)

- Domestic laws on GI protection need to reflect
 - A country's economic policy goals & industry structure
 - A country's legal traditions & international commitments
 - A country's institutional framework





Basic requirements for GIs domestic legal frameworks (2)

- Domestic protection is a prerequisite for any effective international protection
 - Article 24.9, TRIPS Agreement
 - Article 1 (2), Lisbon Agreement





Diversity of domestic legal protection for GIs: different degrees

- TRIPS minimum standards
 - Laws on unfair business practices; or trademark (TM) approach; or *sui generis* GIs
- TRIPS-plus
 - Article 23 TRIPS extension to other products (mandatory exceptions under Article 24, e.g. prior use of TM)
 - Appellation of origin approach (Lisbon): right to authorize termination of use of prior TMs, Article 5 (6)
 - Bilateral recognition of names & practices
 - Automatic protection (no examination of GI eligibility)
 - Absolute protection (no exceptions: mandatory termination of use of prior TMs)



Degree of protection

- Permissive system (« Type A »)
- Prescriptive system (« Type D ») or
- Variations in between (« Types B, C »)
- Choice depends on
 - Policy goals & structure of domestic production
 - Legal traditions & international commitments
 - Existing institutional infrastructure





Policy goals & structure of domestic production (1)

- Prescriptive system (sui generis GI, AO) where
 - Small scale producers of niche & luxury products
 - GIs as alternatives to mass production
 - GIs as incentives to promote knowledge in traditional production methods, ecological production & sustainable use of biodiversity (UNCTAD BioTrade Facilitation Program for developing countries; www.biotrade.org)



Policy goals & structure of domestic production (2)

- Permissive system (TRIPS minimum; TM approach) where
 - Large scale exporters of mass food production
 - no interest in niche products
 - strict AO/sui generis approach would prevent use of foreign names on home market
 - Food processing industries & food marketers
 - AO/sui generis systems extend protection to food processing → may affect industry
 - Example: 2003 judgment of European Court of Justice *Consorzio del Prosciutto di Parma* : not only production, but slicing & packaging as part of GI



Legal traditions & international commitments

- GIs protection & promotion through state actors (sui generis/AO systems)
- GIs protection & promotion through private actors (TM systems)
- Commitments under international regimes: GI – TM interface
 - TRIPS Article 16: Prior TMs have general priority over GIs (EC/US WTO Panel; possible exceptions under Article 17)
 - US FTAs: Refusal of GIs if consumer confusion with prior TMs
 - EU FTAs: TRIPS-plus: GI priority over conflicting TMs irrespective of consumer confusion or prior TM use



Existing institutional infrastructure (1)

- For efficient *sui generis* system, legislation alone is not sufficient
- Creation of infrastructure
 - Producers' associations
 - Administrative & quality control agencies
 - Enforcement authorities controlling misuses
- Know how by producers as to showing link between origin and product characteristics
- Know how & continuous efforts as to marketing
 - Considerable expertise & resources required





Existing institutional infrastructure (2)

- Consequence: no « one-size-fits-all » solutions, but case-by-case examination of local conditions regarding each particular product
- UNCTAD BioTrade Facilitation Program case studies (2005)
 - Maca plant (Peru; nutritive & medical properties): favorable conditions
 - Borojo fruit (Colombia): lack of origin–quality link; lack of expertise & bodies to ensure uniform quality



GIs and market access

- GIs provide negative right; no guarantee to access foreign markets
- Foreign sanitary requirements may act as potential market access barriers
- Foreign GI administrative system may complicate market access.
 - Example: EU Regulation 510/2006 (agricultural products & foodstuffs): national inspection structures required for marketing of all GI products within EU





Conclusions

- Successful marketing of GI products requires elaborate legal & administrative framework, resources, expertise and political commitment
- Domestic legal frameworks should take account of policy priorities, structure of industry and available infrastructure & administration
- UNCTAD-ICTSD Project on IPRs & Sustainable Development: assistance to DC governments & firms in the use of GIs
 - Regional workshops (Africa, Asia, Latin America)
 - Case studies of successful GI marketing
 - Exchange of experiences in GI management (regulatory councils)



Contact

Christoph Spennemann

Legal Expert

Intellectual Property Team

Division on Investment, Technology and Enterprise
Development (DITE)

UNCTAD

E-mail: Christoph.Spennemann@unctad.org

Tel: ++41 (0) 22 917 59 99

Fax: ++41 (0) 22 917 01 94

<http://www.iprsonline.org>

