

GIs: implementation of the TRIPS Agreement and legal diversity

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Content

1. The TRIPS requirements and their interpretation
2. Distinction product / GI
3. Geographical origin and specification
4. Associated characteristics: shape, package, label...



1. The TRIPS requirements and their interpretation

a. Definition

- GIs: “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.”
- GIs are not mere indications of source!

⇒ How to make the distinction?

→ quality, characteristic: scientific proof (physical-chemical link to a particular terroir, know-how...)

problem: there are always relations between the conditions of production and the product!

→ reputation: consumers surveys, opinion of traders, etc.

problem: a certain degree of reputation may always be found!



1. The TRIPS requirements and their interpretation

b. Legal protection (Art. 22, 2-3-4)

Motives

- Misleading of the consumers
- Unfair competition

Means

- Prevention of the use (at the request of an interested party)
- Refusal of registration of a GI as a trademark (ex officio OR at the request of an interested party)



1. The TRIPS requirements and their interpretation

b. Legal protection (Art. 23), only for wines and spirits

Absolute protection (no need to demonstrate the misleading of the consumers or an act of unfair competition)

But still need to demonstrate the name is a GI !

Means

- Prevention of the use (at the request of an interested party)
- Refusal of registration of a GI as a trademark (ex officio OR at the request of an interested party)
- Multilateral (WTO) register of GIs (under negotiation)

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1. The TRIPS requirements and their interpretation

c. The context

- Globalization of trade = more and more indications of source
- Not all products coming from any designated geographical area benefit from a GI potential value
- Reputation: different kinds, intensities, scales, historical dimensions
- GIs are INTELLECTUAL PROPERTY RIGHTS: reputation is the basis for legal protection, representing the only tangible

value in trade



1. The TRIPS requirements and their interpretation

d. The difficulties

- Very complicated and confused debates at the WTO
- Role of the public authorities: protection granted ex officio or at the request of interested parties (judicial actions)
- Different view on the definition and recognition of GIs (through judgements of courts, registration of trademarks or ad hoc process of registration)
 - ⇒ ***Specific or not specific legal means for the protection of GIs***



1. The TRIPS requirements and their interpretation

d. The difficulties

Cul-de-sac of negotiations:

- **Management of the right:** are GIs a tool of public policy, implying an active role of the public authorities?
- **Recognition of the right:** how to assess the GI nature of a designation? Who is entitled to decide on it?
- **Delimitation of the right:** must a GI have mandatory specifications? Who is entitled to define such specifications? (question of the owner/holder of the IP right)
- **Identification of the legitimate users:** in relation with the specifications (including logically a geographical delimitation...), but also issues of control...
- **Distinction between different stakes:** a few internationally renowned (and usurped!) GIs Vs an unlimited number of very local GIs (or, wines and spirits Vs other GIs...)



1. The TRIPS requirements and their interpretation

d. The difficulties

Register: questions of content and effects

Extension: role of the public authorities, volume of IP to be managed

Specific nature of GIs amongst IP rights: collective, pre-existing (informal first), traditional and territorial...

Common elements with **traditional knowledge** and **indigenous genetic resources**


Protection of names with an **established value in trade** Vs **disclosure of traditional knowledge** (through the registration of names, or not)

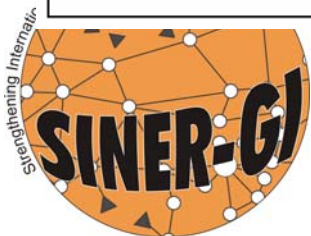


1. The TRIPS requirements and their interpretation

e. Typologizing the legal and institutional diversity

Historical trends in recognising and protecting Gis

Permissive system							Prescriptive system	
Prevention and repression of misleading or unfair use Enforcement mainly on private initiative				Definition of right holders and public enforcement				
Individual trademarks	Collective / certification marks	Definition of GIs when a conflict occurs	Definition of GIs by regulations	Registered GIs (weak requirements on quality)	Registered GIs with general requirements on quality	Registered GIs with special requirements (tradition, terroir...)		
Freedom in labelling and packaging out of the registered figurative or verbal trademarks					Requirements on labelling	Requirements on packaging		
All goods	Wines and spirits		Agro-food products		All kinds of products			
Judicial decisions			Purely administrative rules		Initiative from producers in relation with public policies			



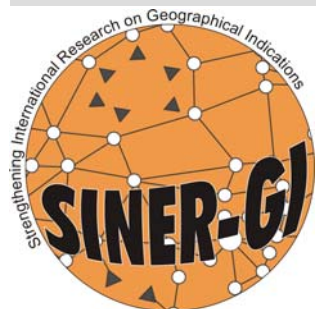
Types of legal and institutional contexts regarding GIs

	Type A	Type B	Type C	Type D
International frameworks	No international system specifically related to GIs	Only international agreements providing general protection for GIs (e. g. TRIPS)	International frame, but without great effectiveness until now (AIPO, Andean Community, some countries members of the Lisbon Agreement...)	International frame with an updated registration system (EU, Lisbon)
International position of the country	No position related to GIs	TRIPS provisions are considered to be sufficient	The establishment of the WTO multilateral register for wines and spirits is accepted, but with limited legal effects	The extension of the protection provided by TRIPS Art. 23 to all products is claimed The establishment of a legally binding WTO register is claimed, extended to all kinds of products
Bilateral frameworks	No bilateral agreement providing protection to GIs	Bilateral agreement(s) providing protection to a few GIs	Bilateral agreement(s) providing protection to a few GIs	Bilateral agreement(s) providing protection to GIs on the basis of presumed comprehensive lists Mutual recognition of registration systems for PDOs and PGIs
Specific legal means of protection	No specific legal means of protection, but general rules on unfair competition or misleading of the consumers	Provisions related to GIs in the trademark law	Specific legal means of protection only for GIs related to wines and spirits	Specific legal means of protection for all agricultural and processed agricultural products, or for all products
Public policy	No specific public policy related to GIs	GIs matters are entirely left to the private sector	Limited public policy related to some GIs, sometimes in relation with tax and/or custom policies (wines and spirits)	Integration of GIs in several public policies related to public goods, rural development, etc.



Types of legal and institutional contexts regarding GIs

	Type A	Type B	Type C	Type D
International frameworks	No international system specifically related to GIs	Only international agreements providing general protection for GIs (e. g. TRIPS)	International frame, but without great effectiveness until now (AIPO, Andean Community, some countries members of the Lisbon Agreement...)	International frame with an updated registration system (EU, Lisbon)
Generics	No specific rules or definition in legislation	Many GIs, even if protected in their originating country, may be considered as generics	Trend to recognise more and more GIs as non generic Definition of semi-generics	Limited number of generics being geographical names Relocalization of GIs against the risk of genericization
Recognition of GIs	No specific recognition of GIs	Recognition of GIs through collective or certification marks	Administrative or judicial recognition of GIs or registration on producers' initiative	Registration of GIs as PDOs or PGIs on producers' initiative through a public and opposable process
Requirements on GI products	No requirements	Only requirements on the area of processing	Only requirements on the area of production and processing No or a few requirements on quality	Heavy requirements on origin and quality, generally based on a prescriptive approach in public policy
Registration authority	No registration authority	Intellectual property office	Specific authority for the registration of GIs, but in some cases without specific competencies	Specific authority, often an office of the ministry of agriculture, assisted by a commission of experts
Control	No control	Control is left to the owner of the trademark, in accordance with the provisions in the law on trademarks	Administrative control, sometimes mainly based on tax or custom concerns	Administrative control and/or certification concerning all the characteristics of the GI products, including organoleptic ones

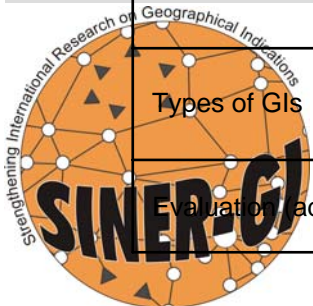


1. The TRIPS requirements and their interpretation

e. Typologizing the legal and institutional diversity

Types of GIs according to their legal and institutional features

Requirements on quality	1	2	3	4	5
Involvement of public authorities	1	2	3	4	5
Control/certification	1	2	3	4	5
Organisational strength	1	2	3	4	5
Effectiveness of the protection	1	2	3	4	5
Types of GIs	13	Type A	Type B	Type C	Type D
Evaluation (addition of all criteria)		5-10	10-15	15-20	20-25



2. Distinction product / GI

- Protection is granted to the association of a geographical name and a specific product: that is GI
- Distinction between the definition of a product and real products!
- The association geographical name/product is based on particular links (quality, reputation, characteristics...) between the geographical territory and its products
- How large can be the range of product benefiting from the

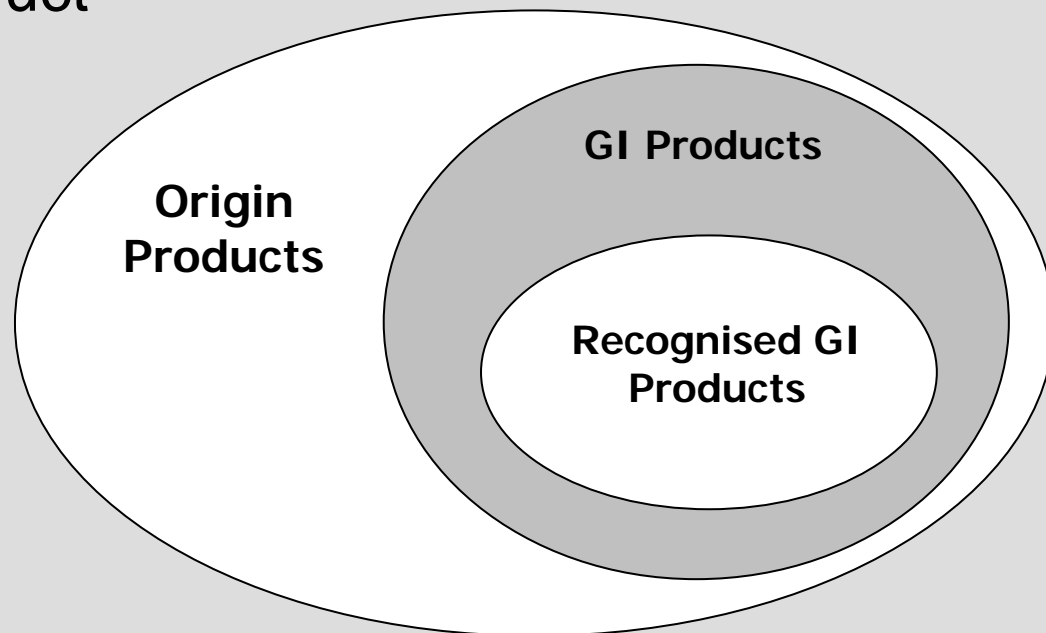
same GI?

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2. Distinction product / GI

- Origin product
- GI product
- Recognised GI product



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2. Distinction product / GI

- **Origin product**

As a consequence of their link with a specific territory, Origin Products are characterised by one or more of these key elements (even though with different intensity):

- material characteristics making them “special” (that is to say: one can not find other products being similar in characteristics);
- specificity of the resources used in the production process;
- history and tradition of the product, and links with history and tradition (know-how, etc.) of the people of the territory;
- collective dimension (many actors involved) and local shared (production and consumption) knowledge.



2. Distinction product / GI

- **GI product**

GI products (GIP) are all the Origin Products that are designated or labelled with a GI (being or not a geographical name). The fact that a GI is used or not to designate the products concerned is the main difference between GIP and OP. GIP are also characterised by one or more of the key elements that characterize OP.

Art. 22.1 of the TRIPS Agreement gives a wide definition of GIs. The determination of whether or not a product is a “GI product” is a matter of interpretation. That interpretation consists in evaluating to what extent a product has a given quality, or a reputation, or another characteristic which is essentially attributable to its geographical origin. No matter in which frame and by whom the evaluation is made: authority registering PDOs-PGIs, court on requirement of interested parties

(producers, consumers...), scientists, etc.

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2. Distinction product / GI

- **Recognised GI product**

For GIs which are protected by specific legal means of protection, we propose to use the expression **Recognised GI (RGI)**, or **Recognised GI products (RGIP)** when talking about the products themselves and the related supply chain. Hence, the protection of a GI by a special legal mean of protection requires what we can call a “recognition”, that one being granted through a formal registration process (e. g. PDOs and PGIs), or through juridical decisions made by courts.

In the RGI category, we must be careful not to use such terms like PDO in a general meaning, but only when one deals with the specific legal categories as they reflect the various ways of implementing the protection of GIs by special legal means.



2. Distinction product / GI

- GIs constituted only by a geographical name: a **Gruyère** (CH), a **Bordeaux** (F)
- GIs constituted only by a non geographical name referring to a geographical origin: a **Tête-de-Moine** (CH), an **Abricotine** (CH)
- GIs constituted by a geographical or non geographical name completed by a localizer, in some cases because the first has become generic: a **Camembert de Normandie** (F), a **Fourme d'Ambert** (F), a **West Country Farmhouse Cheddar** (UK)
- GIs constituted by the common name of the good and a localizing geographical name: **Pain de Seigle du Valais**/Valais Rye Bread (CH), **Prosciutto di Parma**/Parma Ham (I), **Cardon épineux de Genève**/ Geneva Thorny Cardoon (CH), **Fraise du Périgord**/Périgord Strawberry (F)

GIs constituted by what was first the name of a vegetal variety or animal breed:

Lentille verte du Puy¹⁹/ Green Lentil (F)

⇒ May lead to some confusion: **Basmati**



2. Distinction product / GI

- GIs being created as new names: **Ossau-Iraty** (F), GIs for **Vins de Pays** in France
- GIs constituted by a geographical name which covers several sub-designations:
 - Regional name for a mountain pastures cheese in addition to the name of each local mountain pasture or valley
 - Regional name for wines, in addition to domain or village or sub-regional names: **Beaujolais**, **Beaujolais Village**, (Beaujolais) **Moulin-à-Vent**
- Local toponyms, family names, etc., can also be indirect references to a GI (or, at least, a geographical area of source)



2. Distinction product / GI

- Distinction between the renown of a geographical name and its potential use as a GI: London is a world-wide known geographical name, but is it a GI for any kind of good?
- The question of names is related to the different markets:
 - For locals, usually no need to specify the origin and even the type
 - When several types of the same product on one market, or for remote markets, need to specify the geographical origin
- Possible confusion between real GIs and mere indications of source, or even non geographical distinctive designations!...
 - Limits of the consumers' knowledge related to GIs
 - Industries and retailers also use (and sometimes create) trendy GI-like labels
 - Names of vegetal varieties or animal breeds including a geographical name: Jerusalem Artichoke, Hamburger Muskat, tomate Rose de Berne...



2. Distinction product / GI

- Problems of translation/translitteration
 - Parmigiano Reggiano // Parmesan
 - US “Swiss Cheese”
 - Different alphabets and languages: phonetic transcription?
- Problems of homonymy
 - Orange
 - Champagne



2. Distinction product / GI

GI-sharing!



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2. Distinction product / GI

- Distinction between the framework (regulation on GIs, other laws) and the real GI systems
 - ⇒ Public / private
 - ⇒ Collective / individual
 - ⇒ General GI standard / specific standard for each GI
- Role of the GI official or private label as a quality sign *per se*, in addition to co-branding, addition of a GI and an indication of source, different quality signs, etc.
 - ⇒ Risk of weakening if saturation of the “GI market”



3. Geographical origin and specification

- Reputation is linked to quality
- Quality is a relative social concept:
 - For consumers, mere geographical origin is connected at least with ideas on landscapes, climate, traditions, taste...
 - Informal regulation of quality: social network, traditional framework of production, confidence deriving from short supply-chains...



3. Geographical origin and specification

- Dangers: opportunistic behaviours, competition on costs, remote markets with several or foreigner traders, etc.
 - Consequences:
 - need for a collective and mandatory definition of quality
 - effectiveness of the protection of a GI linked to a definition of the products benefiting from the GI
- ⇒ Protection through USE



3. Geographical origin and specification

- Definition of a standard
 - Role of the GI as a sign of confidence
 - Quality minimum requirements
 - General compliance with consumers' associated expectations
- Specificity and variability
 - Distinctiveness of the GI product amongst other products (including other GI products)
 - Respect of the differences between producers (problem: several markets...) ²⁷

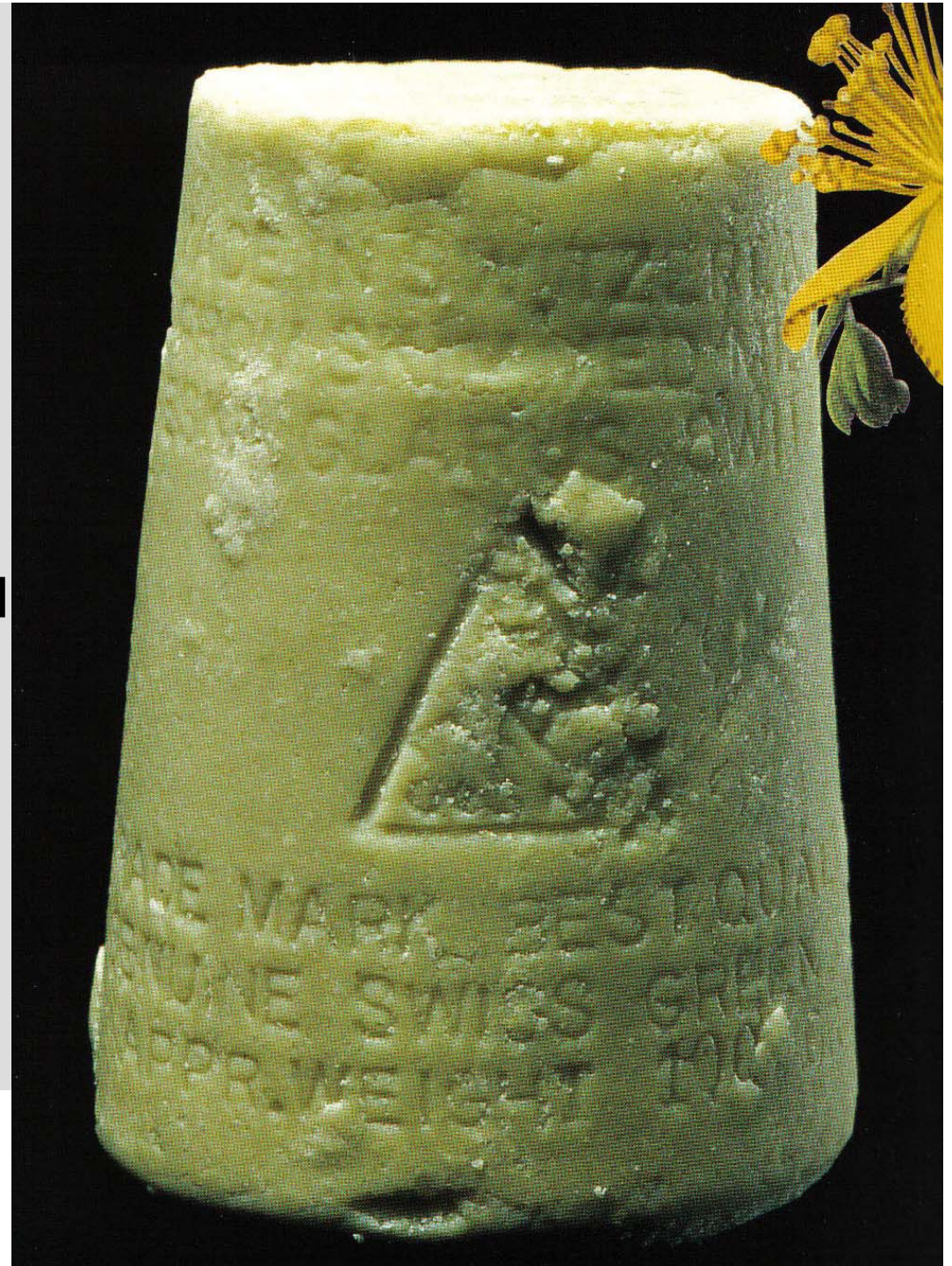


4. Associated characteristics

- Distinctive shape and appearance

Ex.: Glarner Schabzieger (CH)

A very hard green cheese
presented in sawn-off cone



4. Associated characteristics

- Distinctive shape and appearance

Example: Vacherin Mont-d'Or PDO (CH-F)

A wood-ringed soft cheese in a wood box

4. Associated characteristics

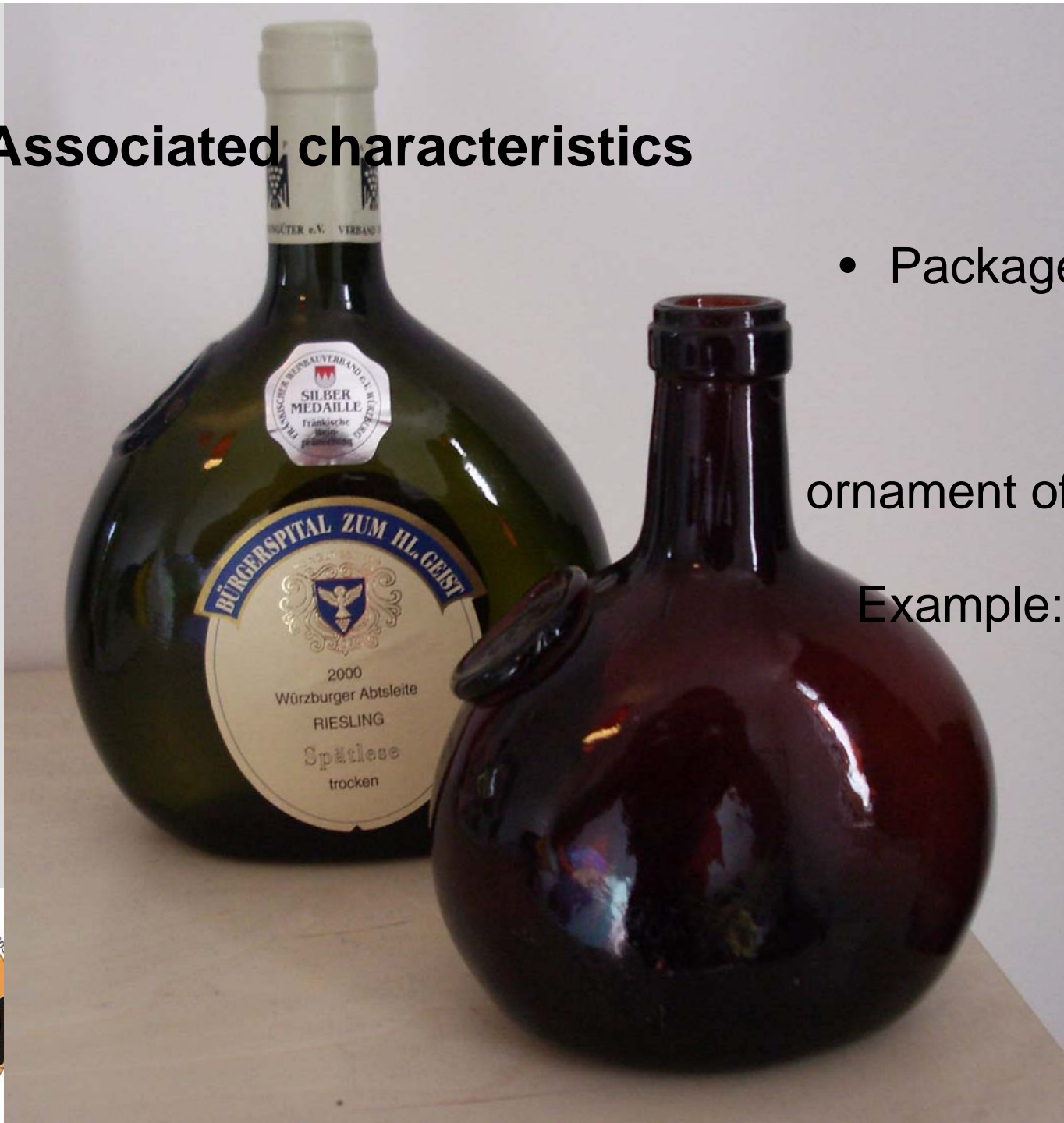
- Packages and labels

Shape and

ornament of wine bottles

Example: Bocksbeutel

(Germany)



4. Associated characteristics

- Packages and labels

Way of selling whole Piment d'Espelette PDO (France)

4. Associated characteristics

- Packages and labels

Common elements of labelling

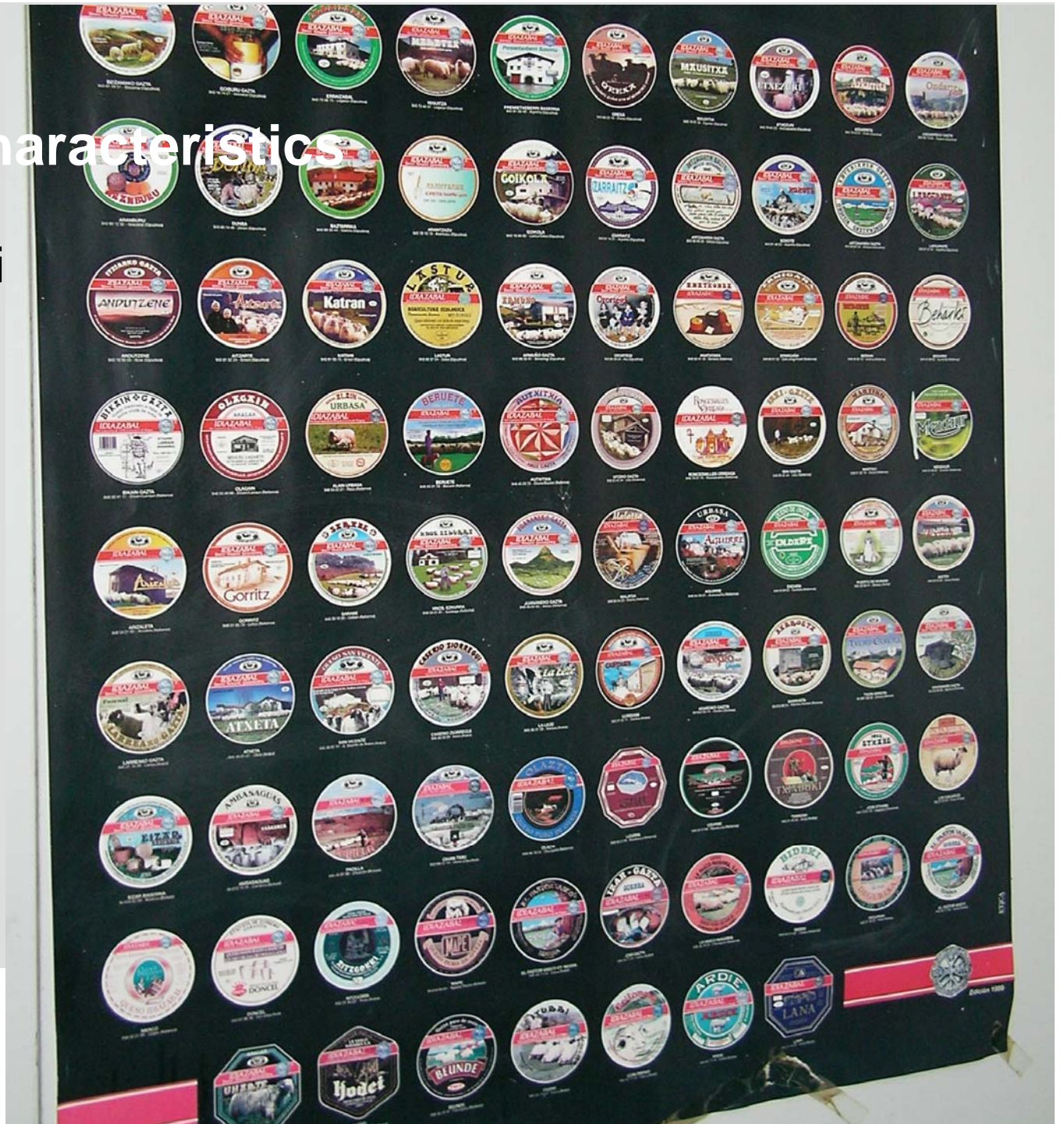
- small producers
- main retailers



4. Associated characteristics

- Idiazabal PDO (Spain)

Red line on all labels
of producers



4. Associated characteristics

- GI designation and label *per se*



Conclusion

- A GI is not only a word!
- Protection/promotion must be thought in their material aspects
- The intellectual property approach and the product/supply chain approach must be considered together



thanks for your attention!

