

SINER-GI
Strengthening International Research on Geographical Indications:
from research foundation to consistent policy

Task1 – WP1
Theoretical frame
Months 1-12

WP1 REPORT

Legal and Institutional issues related to GIs

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References

Information has been drawn from literature, personal communications, debates during SINER-GI workshops, and the WP1 checklists which have been fulfilled for the following countries:

African Intellectual Property Organization	India	Romania
Argentina	Indonesia	Singapore
Cambodia	Italy	South Africa
Chile	Latvia	Spain
China	Lebanon	Switzerland
Costa Rica	Mexico	Thailand
Croatia	Moldova	Tunisia
France	The Netherlands	Turkey
Georgia	Norway	United Kingdom
Greece	Philippines	Vietnam
	Poland	

Due to the qualitative heterogeneity of the information provided by the WP1 checklists, most of that information was used only as a source of reflection, but was not quoted as such. Thus, many of the tables could be fulfilled for numerous countries (they are considered as models to structure the information), but only the solid information was put in the present report.

Summary

Definition(s)

Beyond the definition given by the TRIPS agreement, there are some difficulties to reach a consensus on what a GI is precisely. The issue of the official nature of the protection is not easy to address, due to the diversity of legal tools. Moreover, any GI may benefit from a virtual protection (without registration) but may not be considered as a GI as long as such protection was not requested.

When considering the implicit acceptations linked to the GI concept, the differences amongst countries are important, and they influence the legal and institutional policies regarding GIs.

Different levels of protection

For GIs, probably even more than for any other intellectual property right, the protection can not be dissociated from the definition of the object (what a GI is, and what the product bearing a given GI is) and from the definition of the right (exclusivity, generic denominations, imitations, misuses...). It is also generally necessary to define the legitimate users of a GI, that is to say to define the requirements for users in order to define the non legitimate use. The different levels of protection address these topics in different ways.

Another problematic aspect is constituted by the different scales related to different frames of protection: sub-national, national, bilateral, international, multilateral. Even when only considering the GIs protected through registers, a growing confusion or complexity could appear from the difficulties to establish a comprehensive and coherent frame at the world level.

Different tools of protection

GIs may be protected as registered GIs (e. g. PDO or PGI) or administratively defined GIs, as trademarks (all kinds) or through general laws (protection of consumers, unfair competition...). One GI may be protected by different tools in different countries. In addition, these different tools of protection can be the ground for conflicts regarding the rights.

The legal tools of protection do not address the collective nature of the IP right in the same meaning and to the same extent; that may also be a problematic issue in the perspective of the definition of a universal concept of GIs.

Effects and effectiveness of legal protection

The effectiveness of the legal protection clearly depends on the nature of the conflicts: non legitimate use of a GI, imitations based on appearance and connotations, products coming from the designated area but not complying with the expected quality standard, etc. At this stage and according to the literature, it can not be clearly assessed if the effectiveness of protection can be linked with the type of legal tool and institutional frame.

The effects of the most specific means of protection (tools similar to PDO) appear to be not exclusively connected with the prevention of non legitimate use, but also and perhaps mainly with organisational and marketing issues: collective definition and management of quality, common frame of competition for small-scale firms, collective efficiency due to the reduction of the transaction costs, collective marketing allowing small firms to accede to the markets with lower investments, etc.

To evaluate and typologize

After having considered the diversity in contexts and systems above mentioned, it is not surprising that the establishment of a GIs typology for legal and institutional issues is a quite complicated job. A first step can be the characterization of the national frame for GIs; the rare available literature references aiming at establishing a typology on these topics are focusing on such classification. The WP1 Report also recalls some chronological features which may influence the typology (Table 5 and 6). The result is a table where 4 types are identified, according to a set of criteria (Table 7).

Another mean of evaluation is to assess the real situation of each GI, without paying too much attention to the influence of the general national frame. Building on the grid of analysis which came from the DOLPHINS Project, and of the method of notation which were used in other projects and publications, we made a tentative classification grid based on 5 legal and institutional topics (Table 8).

Needs for further researches

The legal concepts relating to the protection of GIs, as well as the questions of effectiveness of that protection (numerous case law) are well represented in the literature. But some questions related to the legal and institutional issues for GIs are quite absent; amongst them:

- concrete implementation of new legal tools of protection
- administrative management issues (including the organization and costs of controls)
- relations between the protection and the management of the supply-chain
- comparison of the effects of different legal tools of protection

1. Introduction

«Geographical designations, like many other forms of identifier, also touch a wide variety of interests and sensitivities that range from our most basic territorial instincts to more sophisticated conceptions of market and cultural justice. While the misuse of geographical attributions may offend many feelings, only certain types of such misuse are sanctioned by the law.»¹

The objectives of the WP1 were two-fold:

- Characterisation of the different legal and institutional frames related to GIs, taking combinations between administrative scales into account.
- Identification of methods of analysis aimed at assessing the effectiveness and effects of different types and levels of legal protection (both in national and international scopes), in relation with different institutional frames.

The aims of the WP1 Report are to present the theoretical basis and bibliographical analysis of legal status and institutional organisations related to GIs in different EU and non-EU countries, and to propose a grid of evaluation on the legal and institutional aspects of GIs.

The WP1 Report has three dimensions:

1. **Review of theoretical frameworks regarding protection and recognition of GIs**, including institutional frames and implications in related legal fields (e. g. competition legislation), and analysing different kinds of usurpation and misuse of GIs in relation with the scope of legal protection
2. **World-wide review of the different legal and institutional frameworks**, establishing a typology based on in-depth analysis
3. Analysis of **cases of usurpation and misuse of GIs**
→ Link with WP2: *“Identification of method of analysis aimed at assessing the effectiveness and effects of different types and levels of legal protection (both in national and international scopes), in relation with different institutional frames”*

A lot of the information gathered through the WP1 could not be reflected in the present report and will be exploited throughout the whole project in the next deliverables.

¹ In WIPO, 2001b, paragraph 205, p.93.

2. Legal concepts: basics of IP and GIs in public policies

2.1. SINER-GI common definitions and identification of the focus of the analysis²

SINER-GI, as a EU-Swiss funded project aiming at having worldwide perspectives, should deal as much as possible with the most commonly shared concepts, at the general and international levels. The reference concept is **Geographical Indication (GI)** as defined in the TRIPS Agreement (Art. 22.1):

“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.”

GIs are not necessarily

- geographical names
- protected by any specific legal mean of protection (that means legal provisions out of the usual laws on business practices, trademarks, protection against misleading, unfair competition, or even legal provisions implementing the minimum requirements of the section on GIs of the TRIPS Agreement)
- recognised by any special institutional frame

Section 3 of Part II of the TRIPS Agreement does not provide for any specific legal system of protection of GIs but only the obligation for Members to provide the "legal means to prevent the use" of GIs in certain circumstances. Members are therefore free, in accordance with Article 1.1 of that Agreement, to determine the appropriate method of implementing the provisions of Section 3. That minimum level is not specific to GIs, but also to the other categories of intellectual property rights covered by the TRIPS Agreement. The level of protection may vary from legal provisions on unfair competition and misleading of the consumers to specific legal framework providing specific action like action against misuse, counterfeiting, misappropriation... As a consequence, we must be careful in using the notion of GI, which is only a very broad category of rights, which can be covered by several types of rights. Even in most of non-Members of the WTO, **all GIs complying with the TRIPS definition are generally protected by the law**. It is another issue to determine by which means GIs are protected, and whether the protection is effective or not, etc.

The concept of GI is a legal one, without preliminary consideration for the realities it may include. When considering the products themselves, we should talk about **GI products**.

In the SINER-GI research project, WP1 has a legal focus; as a consequence, it follows first to the TRIPS definition of GI, and secondly to the definitions, tools and processes that institutions apply to GIs. WP2 aims at studying socio-economic aspects of production systems of goods originating from territories and having specific features due to their link with the territory. Therefore WP2 is also interested in potential GI products, and in the consequences from using or not a GI, and of benefiting or not from a GI special protection scheme.

2.1.1. Origin Products

In the SINER-GI project, we will refer to the products fitting in the TRIPS definition of GIs as **Origin products (OP)** when it is necessary to include all of them without considering the fact that they are labelled / designated by a GI or not. It is important to note that there are many Origin products that

² That part has been developed together with SINER-GI WP2 responsables (Giovanni BELLETTI and Andrea MARESCOTTI), with some modifications and the final table added by WP1 responsible under his own responsibility.

are not exchanged on markets with a geographical indication, and for which sometimes the very consciousness of having an Origin Product is lacking. The use of a geographical indication to indicate an Origin product is a step in the process of valorisation of the product and it is a result of the behaviour of the actors (local and non local).

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.

Origin Products are usually named differently across countries (typical products, regional food, traditional food, produits du terroir), although with some differences in their meanings, and different cultures across countries give a different weight to the above mentioned elements in the definition of the link with the territory.

2.1.2. GI Products

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-PGIs³, court on requirement of interested parties (producers, consumers...), scientists, etc.

Using the TRIPS definition for GI does not prevent us to propose, in a second step of WP1 analysis, grids of analysis and typologies which would go into further details to determine what products can be considered as GI products. We may also demonstrate that GI must not be limited to geographical names (that is in line with the TRIPS definition).

A GI can also be an addition of many sub-GIs, like it is the case for Berner Alpkäse (cheese from Berner Oberland, Switzerland), the cheeses being designated with the names of the hundreds of alp pastures units.

2.1.3. Recognised GI Products

For GIs which are protected by specific legal means of protection, we propose to use the expression **Recognised GI⁴ (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.

³ Protected Denomination of Origin (PDO) and Protected Geographical Indication (PGI) are used, in that report, to designate all the national or supranational tools of protection similar to the European ones.

⁴ RGI or RGIP will be used in order to avoid any confusion with PGI, which is a legally defined category in many sui generis legal frames, whereas the special means of protection can consist in other legal frames such as case by case legal definitions or court decisions.

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.

WP1 and WP2 should analyse the benefits and the costs (at social, supply chain and firm level) of the use – and of the lack – of these specific protection schemes.

Scheme 1. A taxonomy of different types of products linked to the territory

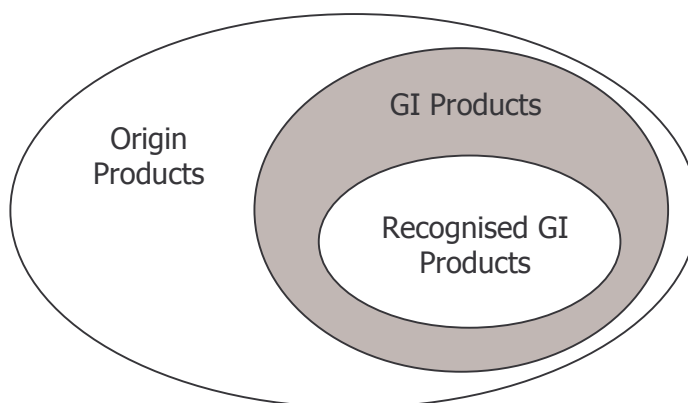


Table 1. Synthesis of definitions

Concept	ORIGIN PRODUCTS	GEOGRAPHICAL INDICATION	GI PRODUCTS	RECOGNISED GI	RECOGNISED GI PRODUCT
Explanation	Special characteristics and/or integrating special resources and/or history and tradition (elements of reputation) and/or collective (usually local) knowledge	Indication of source + quality, reputation or other characteristics of the good in relation with its geographical origin	Origin Product bearing a GI	GI benefiting from a special protection (by law or by court decision)	Product which legitimately bears a recognised GI
Who defines?	Locals Connoisseurs Researchers	TRIPS Agreement	Market Producers/ consumers	Ministry of Agriculture or other designated public institution (intellectual property office...)	Producers groupings located in the area of the GI
Who implements/enforces?	Slow Food movement?	Courts Public authorities against misleading of the consumers and unfair competition	Public authorities against misleading of the consumers and unfair competition	Organisation of producers	Inspection and certification bodies (public or private)

2.2. From indication of source to geographical indication

2.2.1. How intellectual property deals with the link to origin

Trade in goods requires not only goods, but also signs. These signs can be names which are necessary to designate briefly the goods, that is to say implicitly describe their nature, properties, use, etc. They can be common designations, usually for a general type of good in everyday language, referring or not to a sub-category: “water” as well as “mineral water”, “wine” as well as “sparkling wine”, “cheese” as well as “soft fat cheese”. They can also be distinctive signs⁵, which are (or should be) only used for the goods coming from a designated firm or producer: “Vache qui rit” for a cheese spread; “Porsche” for cars; “Martini” for a vermouth. But there are also place names, which have been used since the beginnings of trade to designate goods, in addition to their common names or distinctive signs, or even instead of any other name, for example Mokha or Mocca (city of Yemen) for coffee.

The need to protect distinctive signs appeared very early, because they represented all the investments made by a producer to establish the reputation of his products as well as his own reputation on the market; the further the consumers are from the producer, the more important the distinctive sign on which they can rely is. As non material goods, they soon entered in the late legal category of intellectual property rights. Thus, trademarks are considered as a mean of distinguishing the goods of several producers, and as a value which can be used by its owner according to his will, even by licensing the use of the trademark to another producer. Trademarks are protected through use and/or registration, which are the basis of any legal action intended by the owner. Basically, the protection of trademarks is a protection dedicated to producers, against uses of identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is protected where such use would result in a likelihood of confusion (in particular, unfair competition through usurpation of reputation). In order to get protection, trade names must generally be distinctive and not only descriptive; but it may also occur that trade names become (more or less legally, and especially if they have not been strongly protected) or face the risk to become the common name for a good⁶: “walkman”, “kleenex”, “thermos”, for example. This is what is called the “genericization” process which leads an originally distinctive sign to become the usual and quite inevitable name for a kind of product. We will see that the same applies to geographical indications. For trademarks, in order to avoid the risk of becoming generic, the owner must generally show that he fought against such misuses; that is for example the case for Caddie®, whose owner publishes a protest each time the name is used in media as the generic name for the object.

With globalization, we may find nowadays many place names being indications of source⁷ for goods; they can be understood as a neutral information to competitors and consumers (who are getting further and further from the producers, especially for agro-food products), sometimes used to orientate their choice to national or seasonal production. These indications of source can be called “neutral” because they are not supposed to deal with quality, in any sense of that concept. They are relatively new in history, because 150 years ago, only goods with special qualities were exported out of the area of origin, or the exported products were basic commodities retailed without any indication of source. There were only “Roquefort” or “wheat” (no matter where it came from), but no “oranges from Spain” or “butter from Ireland” (both considered as indications of source). The indications deriving from the rules of origin (customs regulations) for manufactured products,

⁵ Distinctive signs can be trade names, registered or not as trademarks, and geographical indications. «A trade name is the designation adopted by a commercial enterprise [or a group of commercial enterprises] to describe itself and to distinguish it from other businesses and enterprises. Trade names are also referred to variously as company, corporate, business or firm names, although each of these identifiers may sometimes attract slightly different legal or regulatory conditions. [...] A trade name may also be registered and separately protected as a trademark [...]» In WIPO, 2001b, paragraph 298, p.134.

⁶ Rochard (2002), pp. 29-30.

⁷ The expression “indication of source” is used in the same meaning that the one given by Addor and Grazioli (2002, p. 867) on the basis of the Art. 1.1 of the Madrid Agreement: «Any expression or sign used to indicate that a product or a service originates in a country, region or a specific place, without any element of quality or reputation».

“made in ...” with a country name, are not considered as intellectual property rights, except in some cases where they are also considered as GIs (e. g., “**Swiss made**” for watches).

As previously mentioned, the difference between indication of source and geographical indication regards quality and/or reputation attached to the product. It is obviously very difficult to deal with such concepts. The limits are not well defined, and may move from time to time. For a processed product labelled with the designation “**fraises du Limousin**” (strawberries from Limousin, a French region), it is difficult to know if there are a special quality or reputation attached to the place name; if so, they are much less known than those of the “**fraises de Plougastel**” (strawberries from Plougastel, a community in Bretagne). But the reality may be even more complicated: strawberries from Plougastel are now produced in hydroculture, whereas a less known origin has been registered as a PGI: “**Fraises du Périgord**”. In any case, it must be underlined that, being an indication of source or a geographical indication, the real area of origin of the product must correspond to the geographical name⁸. Theoretically, it should be possible that what was first a mere indication of source becomes, through time and maybe other elements like a collective definition of quality and/or a growing reputation of the product, a geographical indication recognised as such on the markets. In any case, it is legitimate to consider that most of the indications of source that can be found on the market have a certain commercial value, due to the fact that they bear a connotation of special quality or reputation (these being recognised or not by consumers) thanks to a similarity with geographical indications. In other words, the use of a geographical name to indicate the origin of goods aims generally at being a commercial asset.

When a place name is recognised⁹ to be linked with a special quality and/or reputation, then it is a geographical indication (GI) and the long-term investments to establish that reputation or to create that special quality should be protected as well as the investments which are attached to a distinctive sign such as a firm name. Today there is a consensus on the fact that GIs are intellectual property rights and that they must be protected as such against usurpation and misuse. In this perspective, recognised GIs should also be protected from indications of source using the same geographical name, but for products which do not have the required quality or for other products usurping the legitimate reputation. This question is just one of the numerous problems related to the protection of GIs.

But, as in the case of trademarks, GIs can become of general use, for products originating from other areas than the original one, due to the reputation and the specific characteristics of the original “archetype”. Such geographical names are said to have turned into generic terms. For example, “camembert” became the name of a type of cheese since more than a century in several countries. It was then not possible to reserve the right to use the term to producers localised in the region of Camembert (Normandy), and therefore protection was only granted to “**Camembert de Normandie**” as a PDO.

All the debate (see above) turns around the determination of the generic nature of a geographical name; that determination may vary from one consumer to another one, from one producer to another one, from one country to another one. That is making conflicts very difficult to solve. In some cases, the producers of the original area can manage to get the “relocalization” of the GI; in particular, when the use of the geographical name did not get a too large extension, or when the geographical name is as much well-known as the economic weight and the political pressure are high (**Champagne, Feta**).

Another point is to make the distinction between:

- GIs constituted only by a geographical name (**Bordeaux, Roquefort**)
- GIs constituted only by a non geographical name referring to a geographical origin (**Fontina, Tête de Moine**)

⁸ The geographical area designated, for example, by a city name, is generally larger than the limits of the city.

⁹ In this part, “recognised” is understood in the broad sense of the recognition by professionals, consumers and local people of the region designated by the GI, and not specifically in the sense of any legal and institutional recognition (see part 2.1.3).

- GIs constituted by a geographical or non geographical name completed by a localizer, in some cases because the first has become generic (**Camembert de Normandie**, **Sainte-Maure de Touraine**)
- GIs constituted by the common name of the good and a geographical name (**Parma Ham**, **Valais Dried Meat**)



To be complete, we must also keep in mind that GIs may be other indications than words: an image, a blazon or a flag, the shape of a bottle can also be interpreted as GIs, or as a part of a GI. For example, the shape and green colour of **Glarner Schabzieger** (image left) are so specific that any product presenting those features would immediately appear as being a **Glarner Schabzieger**, even if it does not originate from the region of Glarus.

The same applies to **Bordeaux** wines which obtained a monopoly for “barriques” (barrels) of a certain form and dimension, until the French Revolution of 1789¹⁰.

Finally, GIs (and especially the most famous ones, like it is the case for cities) can exist not only in the language of their region of origin, but also in several languages in the country of origin (**Piment d'Espelette** in French and **Ezpeletako Bipperra** in Basque), and obviously and more problematically in foreign languages (like **Parmesan** in English, French or German in relation with **Parmigiano Reggiano**). This translation problem comes in addition to the problem of homonymous GIs, like **Orange** in France, South Africa and other countries. One may conclude that “the debate about GIs is at core a debate about the function of language, about contrasting views about how language should be used, and about the ownership of language. It reflects the inevitable tension that arises between linguistic communities where both see a particular interest, whether it be cultural or commercial, in a particular use of language, and those interests diverge”.¹¹

The intellectual property rules would have to deal with all these elements, in order to make a relevant balance between positive rights and negative rights (i.e. the right to prevent third parties from certain acts), between legitimate uses and other uses such as free-ride on reputation.

2.2.2. From different cultures to different legal conceptions

Following Stern (2000), there are two main types of systems for GIs: a **prescriptive system** and a **permissive system**. The first one aims at defining and controlling a close relationship between the product and its *terroir*; that is to say, through precisions on the natural and human factors involved, the system gives a prescription on quality. The permissive system essentially focuses on the delimitation of the area of origin, being closer to the indication of source in that sense. Obviously, the information given to consumers, the possibilities of innovations, the distinction between producers (and their trademarks) are not the same in the two systems.

A permissive system can, as well as a prescriptive system, establish a special frame of protection including a register; this is usually the case for wines, for specific reasons attached to these products (TRIPS provisions, bilateral agreements...). But, in a permissive system, that register would only define the geographical areas, and may be the rights to mix grapes or wines from different areas in relation to the GIs which are used. A permissive system only deals with the geographical origin of the raw material¹², and that is generally the scope of the provisions in

¹⁰ Mentionned by Van Caenegem (2003), part II, p.862.

¹¹ Taubman, 2001, p.4.

¹² In that sense, the first step (before the law of 1935) of the establishment of the French system of AOC was a permissive one, because it did not require any other criteria than the geographical delimitation.

trademarks law regarding the registration of geographical names as trademarks: they must be non deceptive as to the real origin of the products. Certification trademarks are usually presented as the best way to protect GIs in permissive systems; but, even if rules are very strict and precise the quality features in relation with the geographical environment, the registration of a certification mark is based on the intention of the group of producers «which is free to define the rules for users in line with the characteristics it chooses»¹³. In a prescriptive system, such freedom is not possible, either because of the general requirements of the IP category (mainly, PDOs and PGIs), or the rules of examination by the authorities before registration, or the fact that public authorities define themselves the requirements to meet to be authorized to use the GI (through legal means which do not imply any initiative from the producers, for example).

The main difference lies in the role recognized to public authorities, until a point which may be interpreted as a definition of the “good taste”, or, at least, of the heritage which is to be preserved. But some analysts think that the gap is not so deep, when considering the case of organic agriculture which also requires a strong involvement of the State¹⁴.

A cultural gap may also appear between countries of the “Old World” and those of the “New World”, especially those of the latest group which have been populated by European or other immigrants. In those countries, many or most of the ancient and indigenous geographical names may have been replaced by European ones, being so homonymous with the original places in Europe. For example, there are more than 5000 US cities with Swiss names. The migration of geographical names, first associated with the migration of traditions and techniques, may be used by some authors to denigrate the link to the territory: «This migration in meaning suggests that the essential land/qualities nexus – the notion of *terroir* – is at least partly a myth. Indeed, present trends in geographical indications law shows increasing abandonment of the *terroir* idea. At the same time, the essential land/qualities nexus was never necessary to support limited protection of geographical indications, but such limited protection should not extend to all phrases¹⁵.»

Hence even a consensus on the legal tools to protect GIs, for example a multilateral register with a binding effect, may hide different realities behind GIs, possibly reflected in the national requirements for the protection or registration of domestic GIs.

¹³ Lucatelli (2000), p.10.

¹⁴ Barham (2003), p.134 and 137.

¹⁵ Hugues (2003).

3. International and regional frameworks for the protection of GIs

3.1. Several attempts to establish an international standard of protection

There are a lot of bibliographical references where the different and successive international agreements dealing with GIs are presented and analysed¹⁶. We are not going into details in this matter, but rather focusing on the main interpretations of these legal frames and their importance in the present debates. Generally speaking, all the agreements previous to the TRIPS Agreement have lost the greatest part of their relevance, or constitute a potentially complex legal situation due to their multiple implications and imbrications for States which have signed some of them, or some parts of them (for the Paris Convention especially), or which may have applied or not the provisions to their GIs¹⁷.

Before 1995 (TRIPS), international agreements can be distinguished in two types:

- a. A wide range agreement providing a very general frame and a weak protection: the Paris Convention for the Protection of Industrial Property (1883)
- b. Agreements limited in number of signatory States, providing more precise definitions and stronger protection through a register

International agreements (except the Lisbon Agreement) provide only general principles that signatory States must implement in their own legal systems. The general weakness of the protection of GIs was due to the weakness of the protection granted by the Paris Convention and the limited number of signatory countries to the Madrid Agreement (indications of source) and the Lisbon Agreement.

The Lisbon Agreement was signed in 1958, and has now 25 members; since 2000, Moldova, Georgia, North Korea, Peru, Iran and Nicaragua became members. It resulted from the Lisbon Diplomatic Conference of 1958, where no majority was found to improve the protection of GIs directly through the Paris Convention and the Madrid Agreement. Within the framework of the Paris Convention, the Lisbon Agreement is exclusively dedicated to the protection of appellations of origin. The highest level of protection is granted to appellations of origin which are recognized and protected in their country of origin, and have been registered in the international register administered by the WIPO. The system provides a notification and opposition procedure to its members, which led to the registration of about 800 appellations of origin.

Due to its limited number of members and its standard similar to the South European appellation of origin, the Lisbon Agreement appeared in the 1970s to not have solved the problems related to the international protection of GIs. This is why in 1974-75 WIPO prepared a new multilateral treaty on the protection of GIs, which would have provided a system of international registration for GIs defined in a broader sense than the appellations of origin under the Lisbon Agreement. The preparation of a new treaty on GIs was abandoned in favour of new provisions which would have been adopted in the revision of the Paris Convention; but this revision was finally not concluded. A new attempt to establish an international framework for the protection of GIs was discussed in 1990 by the WIPO Committee of Experts on that matter, without any concrete result. Finally, GIs were integrated in the negotiations of the Uruguay Round amongst other intellectual property rights related to trade in goods.

¹⁶ Addor and Grazioli (2002); Rochard (2002); Olszak (2001), Stern (2004), Thévenod-Mottet (2001), WIPO (2001a)

¹⁷ See Olszak (2001), pp. 104-118.

3.2. The TRIPS Agreement and its forthcoming evolution

Still being a general framework whose principles must be implemented by Members in their own legal systems and by the means they decide, the TRIPS Agreement has some distinctive features in comparison with the previous ones regarding GIs:

- a. A very large number of Members (TRIPS being an obligatory part of the WTO “package”).
- b. A close connection with trade, and especially globalization of trade.
- c. A potentially close relation with the negotiations in trade of agricultural products, being under the same WTO umbrella and because of the rounds of negotiations to liberalise trade between WTO Members.
- d. A strong potential of evolution due to the provisions of TRIPS Art. 23.4¹⁸ and the on-going debates (on extension of the additional protection of GIs for products other than wines and spirits, on the so-called “outstanding implementation issues”, etc.).

In addition, most of the countries which are not already members of the WTO wish to accede to the WTO, and the accession to the WTO requires candidate countries to prepare the implementation of the TRIPS Agreement. This has appeared to be a powerful incentive for a large number of States, including the developing countries which are already Members of the WTO (but can or could benefit from transitional periods) to carefully consider how to implement the TRIPS provisions on GIs.

The problems lie within the Agreement itself, which, according to Hugues (2003) «is (i) a low and loose level of protection for all geographical indications with (ii) heightened protection for geographical indications of wines and spirits (sought by Europe), subject to (iii) important exceptions (sought by the US). Along the way, the negotiations produced what political compromises so often produce: an agreement to put off the full battle for another day.» That another day is planned by Article 23.4 of the TRIPS Agreement on the negotiations on a multilateral system of notification and registration of GIs for wines and spirits, and on the obligation for Members to agree to enter into negotiations aimed at increasing the protection of GIs under Art. 23 (debate on the interpretation of Art. 24.1).

The general protection provided for GIs by the TRIPS Agreement differs from the Lisbon Agreement by disconnecting quality and origin, according to the definition of GI quoted in the introduction; as a result, the quality of the product is only one of the possible criteria according to which the geographical indication that it bears can be eligible for the protection provided by the TRIPS Agreement

In Section 3 of Part II of the TRIPS Agreement, three different levels of protection are provided for geographical indications. The first level (Article 22) is a minimum standard of protection for all products. It prohibits any use which constitutes an act of unfair competition in the sense of Article 10*bis* of the Paris Convention, and the misleading of the public as to the geographical origin of the good; it also prohibits the registration of a trademark which would contain or consist of a geographical indication for goods not originating in the territory indicated, but only if such a use would mislead the public as to the true place of origin. This level of protection also applies to geographical indications which, although literally true as to the territory in which the goods originate, would falsely represent to the public that the goods originate in another territory. In conclusion, the minimum protection is in connection with misleading of the consumer and unfair competition, which have to be proved and determined by an authority, generally a court.

¹⁸ Which reads as follow: «In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.»

The second level of protection (Article 23, paragraphs 1-2) is only available for wines and spirits. It strictly prohibits the use of a geographical indication on wines and spirits not having the corresponding origin, even if it is used in translation or accompanied by an expression such as “kind”, “type”, “imitation”, etc.; and the registration of a trademark containing or consisting of a geographical indication for wines or spirits not having this origin is prohibited, even if the public is not misled as to the true origin of the product. Moreover, paragraph 1 of Article 24 mentions that Members will enter into negotiations aimed at increasing the protection of individual geographical indications for wines and spirits (interpretation from Cairns Group and others) or for all products (interpretation of GIs Friends Members).

The third and highest level of protection (Article 23, paragraphs 3-4) is provided only for wines. Paragraph 3 deals with homonymous geographical indications for wines, granting protection to each of them, but also requiring each Member to determine the practical conditions under which the homonymous indications will be differentiated from each other in order to avoid any misleading of the public. But paragraph 4 stipulates that, “in order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system”. The establishment of a register could be considered as a higher level of protection, in relation with its potential legal effects¹⁹. Since 1997, the TRIPS Council (the WTO body which deals with intellectual property matters) has been discussing whether spirits would be as well concerned by such a register. The Doha Declaration (2001) provided a clear mandate for the negotiation on the establishment of a register for GIs for wines and spirits²⁰.

Since the entry into force of the TRIPS Agreement, and especially since 2000²¹, the negotiations in the TRIPS Council have been very hard and lasting, and no consensus could be reached on the two main points of debate. The first one relates to the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits under Article 23.4. The main discussed questions are: first, the legal effects of the GIs registered in such a register, and the scope of application of that register or its comprehensiveness²²; second, the establishment of a dispute procedure to deal with notifications which would be considered as not eligible for protection by one or several Members²³; third, the costs and administrative burdens of such a register, in particular for developing countries. The second main topic of debate is the extension of the level of protection provided for wines and spirits to other products²⁴. The question of whether or not Art. 24.1 of the TRIPS Agreement could justify extension is still being debated.

¹⁹ We consider the register as a higher level of protection on a conceptual point of view rather than on a strictly legal one: to register a GI in an international register gives to a specific explicit status to that GI, and may influence the concrete application of the protection whatever the precise legal effects of the register are; in that sense, the registration could be considered as a kind of preliminary concretization of the protection out of the judicial decisions on each case

²⁰ The Declaration of the WTO Ministerial Conference of Doha mentions in Paragraph 18 : « with a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of this Declaration » (WT/MIN(01)/DEC/1, 20 November 2001). Argentina, amongst other Members, contested the terms of that Doha mandate on GIs.

²¹ Proposal from Bulgaria, the Czech Republic, Egypt, Iceland, India, Kenya, Liechtenstein, Slovenia, Sri Lanka, Switzerland and Turkey, IP/C/W/204 and 204/Rev.1)

²² The two key issues mentioned in the Chair's report in 2005 are: the extent to which legal effects at the national level should be consequent on the registration of a GI for a wine or a spirit in the multilateral register, and the question of participation, including whether any legal effects under the multilateral register should apply in all WTO Members or only in those opting to participate in the register.

²³ The debates on an arbitration system was mainly nourished by a proposal from Hungary (supported by Switzerland), but since that country became a Member of the EU the question is not so debated

²⁴ For details on the past and ongoing negotiations in the WTO, see Vivas-Eugui (2001), Addor and Grazioli (2002), Rangnekar (2003 and 2004)

3.3. Regional and bilateral frameworks: a way to go ahead?

For countries with prescriptive systems of protection for GIs which aim at getting protection on a larger scale than the national one, bilateral agreements may appear as a good way to reach the objectives. It is also due to the fact that agreements with a strong definition for GIs did not succeed in extending to a very large number of countries, and that the TRIPS definition of GIs is weaker (compared to PDOs) and that the whole section on GIs does not require any formal procedure of recognition or of protection. In addition, some regional frameworks were established, often as parts of regional integrative processes.

3.3.1. Bilateral agreements on GIs

Bilateral agreements generally consist in the mutual recognition and protection for domestic GIs which are protected in the contracting States.

As an example, Switzerland concluded the following bilateral agreements:

- Treaty of 7 March 1967 between the Swiss Confederation and the Federal Republic of Germany on the protection of indications of source and other geographical names
- Treaty of 16 November 1973 between the Swiss Confederation and the Czechoslovak Socialist Republic on the protection of indications of source, appellations of origin and other geographical names
- Treaty of 9 April 1974 between the Swiss Confederation and the Spanish State on the protection of indications of source, appellations of origin and similar names
- Treaty of 14 May 1974 between the Swiss Confederation and the French Republic on the protection of indications of source, appellations of origin and other geographical names
- Treaty of 16 September 1977 between the Swiss Confederation and the Portuguese Republic on the protection of indications of source, appellations of origin and similar names
- Treaty of 14 December 1979 between the Swiss Confederation and the Hungarian People's Republic on the protection of indications of source, appellations of origin and other geographical names
- Bilateral Agreement of 21 June 1999 between the Swiss Confederation and the European Community concerning the trade of agricultural products, in particular the Agreement on the trade of wine products and the Agreement on the mutual recognition and protection of designations for spirits (Annexes 7 and 8)
- Bilateral Agreement of 27 November 2000 between the Swiss Confederation and the United States of Mexico concerning the trade of agricultural products, including the mutual recognition and protection of the denominations of spirits

**Bilateral Agreement of 27 November 2000 between the Swiss Confederation and the United States of Mexico
ANNEX IV**

On the mutual recognition and protection of designations for spirit drinks between Switzerland / Principality of Liechtenstein and Mexico

Article 1

The Parties agree, on the basis of non-discrimination and reciprocity, to facilitate and promote trade between them in spirit drinks.

Article 2

[...]

Article 3

For the purposes of this Annex:

“*spirit drink originating in*” means, when followed by the name of one of the Parties, a spirit drink listed in the Appendix I and Appendix II and produced on the territory of that Party;

“*description*” means the designations used on the labelling, on the documents accompanying the transport of the spirit drinks, on the commercial documents, particularly the invoices and delivery notices, and in advertising;

“*labelling*” means all the descriptions and other references, signs, designs or trade marks which distinguish the spirit drinks and which appear on the same container, including the sealing device or the tag attached to the container and the sheathing covering the neck of the bottles;

“presentation” means the designations used on the containers, including the closure, on the labelling and on the packaging;

“packaging” means the protective wrappings such as papers, straw envelopes of all kinds, cartons and cases, used in the transport of one or more containers.

Article 4

The following designations are protected:

- (a) as regards spirit drinks originating in Switzerland/Liechtenstein, the designations listed in Appendix I;
- (b) as regards spirit drinks originating in Mexico, the designations listed in Appendix II.

Article 5

1. In Mexico, the protected Swiss/Liechtenstein designations:

- may not be used otherwise than under the conditions laid down in the laws and regulations of Switzerland/Liechtenstein, and
- are reserved exclusively to the spirits originating in Switzerland/Liechtenstein to which they apply.

2. In Switzerland/Liechtenstein, the protected Mexican designations:

- may not be used otherwise than under the conditions laid down in the laws and regulations of Mexico, and
- are reserved exclusively to the spirits originating in Mexico to which they apply.

3. Without prejudice to Articles 22 and 23 of the Agreement on Trade-Related Aspects of Intellectual Property Rights set out in Annex 1 C of the Agreement establishing the World Trade Organization, the Parties shall take all the necessary measures, in accordance with this Annex, to ensure reciprocal protection of the designations referred to in Article 3 and used to refer to spirit drinks originating in the territory of the Parties. Each Party shall provide the interested parties with the legal means of preventing the uses of a designation to designate spirit drinks not originating in the place indicated by the designation in question or in the place where the designation in question is traditionally used.

4. The Parties will not deny the protection provided for by this Article in the circumstances specified in paragraphs 4, 5, 6 and 7 of Article 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Article 6

The protection afforded by Article 5 shall also apply even where the true origin of the spirit drink is indicated or the designation is used in translation or accompanied by terms such as ‘kind’, ‘type’, ‘style’, ‘way’, ‘imitation’, ‘method’ or other analogous expressions, including graphic symbols which may lead to confusion.

Article 7

In the case of homonymous designations for spirit drinks, protection shall be accorded to each designation. The Parties will lay down the practical conditions under which the homonymous designations in question will be differentiated, taking into account the need to treat the producers concerned fairly and to avoid misleading the consumer.

Article 8

The provisions of this Annex shall in no way prejudice the right of any person to use, in the course of trade, their name or the name of their predecessor in a business, provided that such name is not used in such a manner as to mislead consumers.

Article 9

Nothing in this Annex shall oblige a Party to protect a designation of the other Party which is not protected or ceases to be protected in its country of origin or which has fallen into disuse in that country.

Article 10

The Parties shall take all measures necessary to ensure that, in cases where spirit drinks originating in the Parties are exported and marketed outside their territory, the protected designations of one Party referred to in this Annex are not used to designate and present spirit drinks originating in the other Party.

Article 11

[...]

Article 12

If the description or presentation of a spirit drink, particularly on the label or in the official or commercial documents or in advertising, is in breach of this Annex, the Parties shall apply administrative measures or initiate legal proceedings as appropriate in order to combat unfair competition or prevent any other form of wrongful use of the protected name.

Article 13

[...]

Article 14

1. If one of the Parties has reason to suspect that:

- (a) a spirit drink as defined in Article 2, being or having been traded between Mexico and Switzerland/Liechtenstein, does not comply with this Annex or the relevant Swiss/Liechtenstein or Mexican legislation applicable to spirit drinks; and
- (b) this non-compliance is of particular interest to the other Party and could result in administrative measures or legal proceedings being taken, that Party shall immediately inform the other Party.

2. The information to be provided in accordance with paragraph 1 shall be accompanied by official, commercial or other appropriate documents, as well as an indication of what administrative measures or legal proceedings may, if necessary, be taken. The information shall include, in particular, the following details of the spirit drink concerned:

- (a) the producer and the person who stocks the spirit drink;
- (b) the composition of that drink;
- (c) the description and presentation; and
- (d) details of the non-compliance with the rules concerning production and marketing.

Article 15

1. The Parties shall enter into consultations if one of them considers that the other has failed to fulfil an obligation under this Annex.
2. The Party which requests the consultations shall provide the other Party with the information necessary for a detailed examination of the case in question.
3. In cases where any delay could endanger human health or impair the effectiveness of measures to control fraud, interim protective measures may be taken, without prior consultation, provided that consultations are held immediately after the taking of these measures.
4. If, following the consultations provided for in paragraphs 1 and 3, the Parties have not reached agreement, the Party which requested the consultations or took the measures referred to in paragraph 3 may take appropriate protective measures so as to permit the proper application of this Annex.

Article 16

1. The Parties may by mutual consent amend this Annex in order to enhance the level of cooperation in the spirit drinks sector.
2. Where the legislation of one of the Parties is amended to protect designations other than those listed in the Appendixes, these designations shall be included, within a reasonable length of time, following conclusion of the consultations.

Article 17

1. Spirit drinks which, at the time of the entry into force of this Agreement, have been legally produced, designated and presented, but which are prohibited by this Annex, may be marketed by wholesalers for a period of one year from the entry into force of the Agreement and by retailers until stocks are exhausted. From the entry into force of this Agreement spirit drinks included herein may no longer be produced outside the limits of their regions of origin.
2. Spirit drinks produced, designated and presented in accordance with this Annex when they are marketed but whose description and presentation ceases to conform to this Annex following an amendment thereto may be marketed until stocks are exhausted unless otherwise agreed by the Parties.

APPENDIX I

Protected designations of spirit drinks originating in Switzerland/Liechtenstein:

Wine spirit

Eau-de-vie de vin du Valais	Brandy du Valais
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Grape marc spirit

Balzner Marc	Baselbieter Marc
Benderer Marc	Eschner Marc
Grappa del Ticino/Grappa Ticinese	Grappa della Val Calanca
Grappa della Val Bregaglia	Grappa della Val Mesolcina
Grappa della Valle di Poschiavo	Marc d'Auvernier
Marc de Dôle du Valais	Schaaner Marc
Triesner Marc	Vaduzer Marc

Fruit spirit

Aargauer Bure Kirsch	Abricot du Valais
Abricotine du Valais	Baselbieterkirsch
Baselbieter Zwetschgenwasser	Bernbieter Kirsch
Bernbieter Mirabellen	Bernbieter Zwetschgenwasser
Bérudges de Cornaux	Canada du Valais
Coing d'Ajoie	Coing du Valais
Damassine d'Ajoie	Damassine de la Baroche
Emmentaler Kirsch	Framboise du Valais
Freiämter Zwetschgenwasser	Fricktaler Kirsch
Golden du Valais	Gravenstein du Valais
Kirsch d'Ajoie	Kirsch de la Béroche
Kirsch du Valais	Kirsch suisse
Luzerner Kirsch	Luzerner Zwetschgenwasser
Mirabelle d'Ajoie	Mirabelle du Valais
Poire d'Ajoie	Poire d'Orange de la Baroche
Pomme d'Ajoie	Pomme du Valais
Prune d'Ajoie	Prune du Valais
Prune impériale de la Baroche	Pruneau du Valais
Rigi Kirsch	Seeländer Pflümlwasser
Urschwyzerkirsch	Williams du Valais

Zuger Kirsch

Cider spirit and perry spirit

Bernbieter Birnenbrand
Luzerner Birnenträscha

Freiämter Theilerbirnenbrand
Luzerner Theilerbirnenbrand

Gentian spirit

Gentiane du Jura

Juniper-flavoured spirit drink

Genièvre du Jura

Liqueurs

Bernbieter Cherry Brandy Liqueur
Bernbieter Kirschen Liqueur
Liqueur d'abricot du Valais

Bernbieter Griottes Liqueur
Liqueur de poires Williams du Valais
Liqueur de framboise du Valais

Herb-flavoured spirits (spirit drinks)

Bernbieter Kräuterbitter
Eau-de-vie d'herbes du Valais
Gotthard Kräuterbrand
Walliser Chrüter (Kräuterbrand)

Eau-de-vie d'herbes du Jura
Genépi du Valais
Luzerner Chrüter (Kräuterbrand)

Other

Lie du Mandement
Lie du Valais

Lie de Dôle du Valais

APPENDIX II

Protected designations of spirit drinks originating in Mexico:

Agave spirit drink TEQUILA: Protected, made and classified in accordance with the laws and regulations of Mexico

Agave spirit drink MEZCAL: Protected, made and classified in accordance with the laws and regulations of Mexico

Agave spirit drink BACANORA: Protected, made and classified in accordance with the laws and regulations of Mexico

France and Germany signed such an agreement on GIs in 1960; the EU has signed agreements with Australia on wines (1994), Mexico on spirits (1997), South Africa on wines (1999), Chile on wines (2002), Canada on wines and spirits (2003), United States on wines (2005) etc. The EU is at present negotiating with Switzerland its first agreement concerning agro-food products other than wines and spirits.

AGREEMENT

between the European Community and Canada on trade in wines and spirit drinks

16 September 2003

Extracts

Article 10

Registration and protection in Canada

1. The names listed in Annex III(a), which identify a wine as originating in the territory of the Community where a quality, reputation or other characteristic of the wine is essentially attributable to its geographical origin and is officially recognised and protected as a geographical indication within the meaning of Article 22(1) of the TRIPs Agreement by the applicable laws in the Community, are eligible for registration as protected geographical indications for wine in Canada.

2. A protected geographical indication may not be used to describe or present a wine not originating in the place indicated by the protected geographical indication in question, including translations, whether or not accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like, and whether or not the protected geographical indication is accompanied by a reference to the true place of origin.

3. In accordance with the application process laid down in Canadian law, Canada shall take the necessary steps to have the names listed in Annex III(a) entered on the list of protected geographical indications in Canada after an application for registration has been made in good and due form.

Article 11

Protection in the Community

1. The names listed in Annex III(b), which identify a wine as originating in the territory of Canada where a quality, reputation or other characteristic of the wine is essentially attributable to its geographical origin and is officially recognised as a geographical indication within the meaning of Article 22(1) of the TRIPs Agreement by the applicable laws in Canada, are eligible for protection as geographical indications in the Community.

2. A protected geographical indication referred to in paragraph 1 may not be used to describe or present a wine not originating in the place indicated by the protected geographical indication in question, including translations, whether or not accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like, and whether or not the protected geographical indication is accompanied by a reference to the true place of origin.

3. In implementation of paragraphs 1 and 2, after receiving an official application by diplomatic note from Canada justifying that the names in paragraph 1 are geographical indications, the Community shall take the necessary steps to have the names listed in Annex III(b) protected by the competent authorities responsible for enforcement so that any wines incorrectly presented or described with a protected Canadian geographical indication are not placed on, or are withdrawn from, the market.

Article 12

Customary terms and transitional arrangements

1. By the end of the transitional period hereinafter indicated, Canada shall no longer deem that the following wine names are customary in the common language of Canada as a common name for wines as foreseen in Article 24(6) of the TRIPs Agreement:

<i>Name</i>	<i>End of transitional period</i>
Bordeaux	entry into force of the Agreement
Chianti	entry into force of the Agreement
Claret	entry into force of the Agreement
Madeira	entry into force of the Agreement
Malaga	entry into force of the Agreement
Marsala	entry into force of the Agreement
Medoc	entry into force of the Agreement
Médoc	entry into force of the Agreement
Mosel	entry into force of the Agreement
Moselle	entry into force of the Agreement
Chablis	31 December 2013
Champagne	31 December 2013
Bourgogne	31 December 2008
Burgundy	31 December 2008
Port	31 December 2013
Porto	31 December 2013
Rhin	31 December 2008
Rhine	31 December 2008
Sauterne	31 December 2008
Sauternes	31 December 2008
Sherry	31 December 2013.

2. From the date of entry into force of this Agreement, none of the wine names listed in paragraph 1 may be used to describe or present a Canadian wine that is certified as meeting VQA rules.

These agreements, which are mainly focused on wines and spirits GIs, are generally based on lists of GIs which are annexed to the general provisions; this is why these agreements do necessary reflect the situation (including diplomatic, technical and economic or trade matters such as market access for products) at the moment when the agreement is signed. They are often a mean to solve conflicts on the use of some GIs, as it was especially the case with the agreement between the EU and Australia. But the lists of registered/protected GIs and the interests of producers may evolve through time, while such protection is fixed: bilateral or plurilateral agreements generally provide internal mechanisms by which additions can be made to the lists.

The main interest of bilateral agreements is that they can escape from difficulties related to different national systems of protection for GIs and ensure a very effective protection for the GIs listed in the agreements (roll-back provisions, protection against genericity, often protection against registration of TMs consisting of or containing GIs not coming from the corresponding geographical areas, etc.). But, even if bilateral or international agreements are surely an efficient tool to get protection for GIs in the signatory countries, they constitute a patchwork of treaties the content of which may considerably vary and a time-consuming way of establishing, for a given GI, a kind of complicated and incomplete cover in a world perspective. Moreover, most of the existing

agreements are limited to wines and spirits GIs. Regional registers face the same limitations: the need for a world-wide comprehensive and efficient framework of protection for GIs is increasing at the same pace than the globalization process. Nevertheless, considering the difficulties faced in the debates at the TRIPS Council, the establishment of a world-wide GIs register like the European one appears as a remote future; in that context, bilateral agreements “complementing” the TRIPS basic provisions on GIs may go on multiplying.

3.3.2. Regional frameworks for the protection of GIs

Several neighbouring countries, on the basis of their common trade concerns (free-trade initiatives) and the fact that their GIs may easily spread over national borders, have created regional frames for the protection of GIs, through a register with binding legal effects.

The first regional frame of that kind is the International Convention for the use of *appellations d'origine* and denominations of cheeses (Stresa Convention), signed in 1951 with eight signatory states: Austria, Denmark, France, Italy, Norway, the Netherlands, Sweden and Switzerland. Nowadays, only France, Italy, the Netherlands and Switzerland remain members of the convention. This convention establishes the highest degree of protection for four geographical indications considered as *appellations d'origine* (first category, annex A): **Gorgonzola, Parmigiano Reggiano, Pecorino Romano, Roquefort**. Art. 3 reserves the use of these *appellations d'origine* to cheese manufactured or matured in traditional regions, by virtue of local, loyal and uninterrupted usages, in compliance with the national regulations governing that use, whether these *appellations d'origine* are used alone or accompanied by a qualifying or even corrective term. The convention also prohibits the use of some denominations (second category, annex B), such as Camembert, Danablu, Edam, Emmental, Gruyère, Pinzgauer Bergkäse or Samsö, for products which would not meet the requirements provided by the interested contracting party, referring mainly to the shape, weight, size, type and colour of the rind and curd, as well as to the fat content of the cheese. These denominations must be accompanied by the indication of the country of production when it is not the country of original use. The convention also prevents any transfer from one to the other category. After an initial short period, the Convention has ceased to be updated (no new registration of appellations of origin nor denominations), and, whereas still being into force, seems to be not concretely applicable any longer, except in rare occasions²⁵. As an example, **Gruyère** and **Sbrinz** were in the annex B, but they have been registered as PDO in Switzerland in 2001 and 2002.

Other regional frames may be mentioned. The African Intellectual Property Organization, established in 1977, has specific provisions for the registration of GIs at a regional level; but no GI has been registered yet, even if a cooperation project focused on that issue is presently developed with the assistance of WIPO, INPI, INAO and CIRAD. The European PDO-PGI system for agro-food products other than wines and spirits has been established by the EC Regulation 2081 in 1992, now changed in EC Regulation 510/2006²⁶. The Decision 344 of 1993 of the Andean Community is generally ranked amongst regional frames; but it only provides general rules which have to be implemented at a national level by its member States, and the Andean Community does not maintain a regional register of appellations of origin.

²⁵ The Stresa Convention is, for example, useful for Switzerland to protect the denomination Emmental against a complete genericization.

²⁶ As this report was written partly before the adoption of EC Regulation 510/2006, a number of references to EC Regulation 2081/1992 will remain in the text.

4. National and local frameworks for the protection of GIs

Despite the fact that the attention is presently focused on the intensive negotiations in WTO and debates in WIPO to establish a coherent and comprehensive frame of protection for GIs, the stake is also, or even more, in the national systems of protection for GIs. In order to claim protection for their GIs in third countries, it is generally a prerequisite (this is in most cases not only a question of principles but a legal requirement) that the GIs are protected in their country of origin; to do so, the country of origin must have defined the GIs, and provided legal mechanisms of protection more or less specific to GIs.

4.1. Diversity in defining GIs

As previously said, the definition in the TRIPS Agreement is the mean to distinguish between indication of source and geographical indication. Since most of the countries have acceded to the WTO or plan to do it, they must implement the provisions of the TRIPS Agreement in their national law. As a consequence, it is not surprising that the range of diversity is limited in defining what GIs are (see Annex 9.1), even if a large number of countries have given another name to their own legal tool for GI.

The diversity lies also obviously in the specific means of protection, with definitions going further than the TRIPS one for GIs and being close to the definition of appellations of origin in the Lisbon Agreement.

The elements of diversity mainly concern:

- a. Traditional (non geographical) names/designations assimilated to GIs.
- b. Indications other than words; for example, there is a reference to “images” in the Costa Rican definition of PDO. On the contrary, in most cases, the definitions are limiting their scope to “names” or “words”.
- c. Requirements on traditional aspects: in France, there is a reference to “local, fair and constant practices” for Appellations of Origin; in Tunisia, for a PDO “methods of production must be rooted in local traditions being ancient, constant and well-known”; in Switzerland, PDO cheeses must comply with administrative guidelines such as no silage food, raw milk, etc.

Basically, there are definitions similar to the TRIPS one, on the one hand, and definitions going beyond the TRIPS one, on the other hand. The last category is mainly constituted by PDO, DOC, AOC and the same, including the words “appellation” or “denomination” or “designation”. These more restrictive legal definitions (not talking about historical and cultural aspects), are going beyond the TRIPS standard through requirements on:

- exclusivity in the relations between the product and its geographical environment, leading to the idea that it is not possible to produce the same product in another place than the original one; as a consequence, the relations between the product and its geographical environment must be defined in a quite detailed manner, and reputation is not enough;
- exclusivity for the delimited area to provide raw material and for the localisation on any activity of processing or preparation related to the product.

It must be noted that, if the TRIPS Agreement does not prevent a country establishing a more restrictive legal frame for some GIs, like PDOs, it requires that a legal protection for GIs according

to the TRIPS definition is also available, that is to say for all GIs and not only for PDOs-PGIs. In that general context, a country can provide to all GIs a stronger protection than the one provided by Art. 22 of TRIPS, which is a minimum standard.

4.2. Coexistence between different systems

The TRIPS Agreement requires as a minimum obligation that Members of the WTO provide the legal means to protect GIs against certain uses. They are, however, free to determine the appropriate method of implementing its provisions according to their own legal system and practice: regardless of the means, but the aims must be achieved. Currently there seems to be two main systems used or envisaged, i.e. trademark system vs *sui generis* system. In addition to these two, GIs can be protected in a great variety of ways. The complexity of the systems of protection is due to the following facts:

- a. Trademarks are always a part of the IP law, and may often be used for GIs even in countries oriented to *sui generis* protection.
- b. *Sui generis* protection generally applies to a limited range of products, or differ from one type of products to another one.
- c. In certain federal States, some parts of the country may have established a legal system for GIs which is not applied at a national or federal scale.

4.2.1. Trademarks and special means of protection

We will not enter into the debate related to the conflicts between trademarks on the same GI, or between trademarks and *sui generis* GIs; a lot of literature on the matter is available (see Grazioli, 2004, for a recent and quite comprehensive view).

The registration²⁷ of a trademark has the effect to grant the exclusivity of use to its owner (exception for existing prior rights); thus, the legal grounds of decision for registration or refusal of registration «may provide two types of protection for IGOs²⁸: on the one hand, protection against the registration and use of IGOs as trademarks; and, on the other, the protection of IGOs against unauthorized use by third parties» (WTO, 2001, p.8).

In countries which do not have a special system for GIs, protection can generally be obtained through collective or certification trademarks, but this tool presents several problems:

- a. The specifications of the product (level of details and of requirements) are defined by the owner of the trademark, without any involvement from the public authorities.
- b. The protection against misuse and usurpation requires the judicial (or, in certain countries, the administrative) initiative, from the owner²⁹.
- c. The exclusivity of use on the geographical name is more difficult to get with a trademark than with a PDO or PGI.
- d. The exclusivity on the geographical name is more difficult to get with a trademark than with a PDO or PGI, so the trademark often consists in a combination of signs (words and images) including a GI.

²⁷ Rights to trademarks can also be acquired through simple use in common law systems.

²⁸ "Indication of Geographical Origin" is the term used for GIs only in that report.

²⁹ That may be a difference with systems of protection for GIs like the European ones.


Some GIs may, in exceptional cases, be protected as individual trademarks, for example when there is only one producer for which the GI has acquired a distinctiveness through long use (mineral waters, e. g. **Valser** in Switzerland). We must neither take into account, obviously, the geographical names which have been registered as individual trademarks because they have lost (somehow or totally), or they never had any relation to a geographical origin (e. g. “Mont-Blanc” for pens, watches, etc.), nor the individual trademarks which have been registered for products not having the geographical origin related to the geographical indication. Some systems may have a less restrictive approach, dealing with all the possible meanings of a GI, such as the US Patent and Trademark Office: “if a geographic sign is used in such a way as to identify the source of the goods/services and over time, consumers start to recognize it as identifying a particular company or manufacturer or group of producers, the geographic sign no longer describes only where the goods/services come from, it also describes the “source” of the goods/services. At that point, the sign has “secondary meaning” or “acquired distinctiveness.” The primary meaning to consumers is the geographic place; the secondary meaning to consumers is the producing or manufacturing source. If a descriptive sign has “secondary meaning” to consumers, the sign has a source-identifying capacity and is protectable as a trademark”.

The GIs protected by collective or certification/guarantee marks are also not numerous in countries where a special system of protection for GIs has been established. An example is the **Perdrix Blanche**, a denomination for a specific wine of Neuchâtel (Switzerland), which has been registered as a guarantee mark in order to prevent the use of that denomination for wines not originating from Neuchâtel, before the PDO system was established. Such initiative was taken after the denomination **Œil-de-Perdrix**, originally coming from Neuchâtel, has spread in all regions of Switzerland to designate any rosé wine made from Pinot noir. The trademark regulation of **Perdrix Blanche** is now recognised in the PDO regulation for Neuchâtel wines.

In those countries, out of these rare exceptions, collective or certification/guarantee marks do not really protect a GI and do not reserve the use of that GI to the rightholder and other authorized users of the trademark, but rather protect a logo or a combination of words including a GI. For example, in Switzerland, collective or guarantee trademarks cannot consist exclusively in signs of the public domain (Law on trademarks and indications of source, Art. 2 let. a). Moreover, that kind of GI-related trademark generally concerns several types of products, being, to summarize, more a quality collective sign including a geographical origin (amongst other requirements) than a mere GI.

Box 1. An example of an “umbrella” collective trademark with GI

Spesialitet Godt Norsk in Norway




As long ago as in 1994 the collective hallmarks *Godt Norsk* (Good Norwegian) and in 2001 *Spesialitet Godt Norsk* (Good Norwegian Specialty) had been established, to facilitate international recognition and protect national food products from potential outside abuse, anticipating Norway's expected (but not realized) entrance into the European Community.

Although these hallmarks were not designed to protect geographical indications, they may be used as such by food producers. In particular *Spesialitet Godt Norsk* would lend itself for registering regional specialty foods. In fact, one of the holders of this hallmark, the Valdres Rakfisk BA (producing semi-fermented trout) has applied for the Norwegian PDO (see below). However, this is the only producer group so far under the *Spesialitet Godt Norsk* hallmark. The others are private companies.

But, even in countries where GIs can be registered as PDOs or PGIs, it may be possible to register GIs as collective or certification trademarks. For example, the EC Directive to approximate the laws of the Member States relating to trade marks, of 1988, mentions as a derogation to a general principle that “Member States may provide that signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute collective, guarantee or certification marks. Such a mark does not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided he uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark may not be invoked against a third party who is entitled to use a geographical name” (Art. 15, al. 2). Such a possibility is provided in Germany and the United Kingdom, for examples. In UK, the Trade Marks Registry Work Manual (Chapter 6, Examination and Practice, 35.9) stipulates that “ [...] geographical names will be accepted as certification trade marks provided that the name is capable of distinguishing goods or services which are certified from those which are not. Similarly, collective marks consisting of geographical names may be accepted for registration provided that they are capable of distinguishing the goods or services of the members of an association from those of other traders. This may, in practice, be a more difficult test to satisfy compared to the position with certification trade marks. If, for example, the members of an applicant’s trade association comprise only a minority of the persons entitled to use a geographical indication, it may not be possible to conclude that the geographical name distinguishes the goods or services of the members of the association”.

On the contrary, countries which do not have a special legal system of protection for GIs (apart from specific provisions for wines and spirits) may provide protection through the registration of collective or certification marks. For example, the South African Trademarks Act of 1993 provides in Sec. 43 (2) that “Geographical names or other indications of geographical origin may be registered as collective trade marks.”

Box 2. The protection of GIs through certification trademarks in the USA

US Patent and Trademark Office guidelines

GIs as Certification Marks

The U.S. Trademark Act provides that geographic names or signs--which otherwise would be considered primarily geographically descriptive and therefore unregistrable as trademarks or collective marks without a showing of acquired distinctiveness in the United States--can be registered as certification marks.

A certification mark is any word, name, symbol, or device used by a party or parties other than the owner of the mark to certify some aspect of the third parties’ goods/services. There are three types of certification marks used to indicate:

- 1) regional or other origin;
- 2) material, mode of manufacture, quality, accuracy or other characteristics of the goods/services; or
- 3) that the work or labor on the goods/services was performed by a member of a union or other organization.

The same mark can be used to certify more than one characteristic of the goods/services in more than one certification category: the mark **ROQUEFORT** (U.S. Registration No. 571,798) is used to indicate that the cheese has been manufactured from sheep’s milk and cured in the caves of the Community of Roquefort (France) in accordance with their long established methods and processes.

The U.S. Trademark Act differentiates certification marks from trademarks by two characteristics. First, a very important feature of a certification mark is that its owner does not use it. Second, a certification mark does not indicate commercial source nor distinguish the goods or services of one person from those of another person. This means that any entity, which meets the certifying standards, is entitled to use the certification mark. However, certification marks are source-identifying in the sense that they identify the nature and quality of the goods and affirm that these goods have met certain defined standards.

A certification mark may not be used by the owner of the mark because the owner does not produce the goods or perform the services in connection with which the mark is used. The mark may be used only by entities other than the owner of the mark, with authorization from the owner of the mark. The certification mark owner controls the use of the mark by others on the certified goods/services, such

control consisting of the taking steps to ensure that the mark is applied only to goods/services that contain or display the requisite characteristics or meet the specified requirements that the certifier/owner has established or adopted for the certification.

The purpose of a certification mark is to inform purchasers that the goods/services of the authorized user possess certain characteristics or meet certain qualifications or standards. A certification mark does not indicate origin in a single commercial or proprietary source. The message conveyed by a certification mark, when it is applied to goods or used in connection with services, is that the goods/services have been examined, tested, inspected, or in some way checked by the certifier/owner who is not the producer of the goods/services, by methods determined by the certifier/owner. The placing of the mark on goods or its use in connection with services thus constitutes a certification by someone other than the producer that the prescribed characteristics or qualifications of the certifier for those goods/services have been met.

In the experience of the United States, in most instances the authority that exercises control over the use of a geographical term as a certification mark is a governmental body or a body operating with governmental authorization. When a geographical term is used as a certification mark, two elements are of basic concern: first, preserving the freedom of all persons in the region to use the term and, second, preventing abuses or illegal uses of the mark which would be detrimental to all those entitled to use the mark. Generally speaking, a private individual is not in the best position to fulfill these objectives satisfactorily. The government of a region is often the logical authority to control the use of the name of the region. The government, either directly or through a body to which it has given authority, would have power to preserve the right of all persons and to prevent abuse or illegal use of the mark.

All applications for federal registration of certification marks are examined (as are applications for trademarks and collective marks) at the USPTO. The accompanying specimens of use and evidence in the record are reviewed to determine whether the geographical sign is being used as a certification mark to indicate the geographical origin of the goods/services upon which it is used. If the record or other evidence available indicates that a specific sign in question has a principal significance as a generic term denoting a type of goods/services, registration will be refused.

If use of the sign is controlled by the certifier and limited to goods/services meeting the certifier's standards of regional origin, and if purchasers understand the sign to refer only to goods/services produced in the particular region and not to goods/services produced elsewhere, then the sign functions as a regional certification mark. *Institut National Des Appellations D'Origine v. Brown-Forman Corp.*, 47 USPQ2d 1875 (TTAB 1998) ("**COGNAC**" held to be a geographical indication for brandy from France). If, before registration, the USPTO becomes aware that the applicant does not have the authority to exercise control over use of the certification mark, registration will be refused *ex officio*.

As for the enforcement of the certifiers' standards, competitors and consumers--those with the greatest interest in maintaining accuracy and high standards--ensure that certifiers maintain the requisite quality. Of course, the U.S. government has agriculture inspectors for various types of food and beverages, but that is something completely different. With respect to protection of geographical indication certification marks, affected parties can oppose registration or seek to cancel registrations, all within the existing trademark regime in the United States. So, if a party believes that the certifier is not following its own standards or is discriminating by denying use of the mark to a qualified party, that party can file an opposition or cancellation proceeding against the certification mark or an action in federal court.

Source: USPTO website, May 2006

Box 3. The protection of Gis through collective trademarks in the USA

US Patent and Trademark Office guidelines

GIs as Collective Marks

There are two types of collective marks in the United States: (1) collective trademarks or collective service marks and (2) collective membership marks. The distinction between these types of collective marks is explained by the Trademark Trial and Appeal Board (TTAB), a USPTO administrative tribunal, as follows:

A collective trademark or collective service mark is a mark adopted by a "collective" (*i.e.*, an association, union, cooperative, fraternal organization, or other organized collective group) for use only by its members, who in turn use the mark to identify their goods or services and distinguish them from those of non-members. The "collective" itself neither sells goods nor performs services under a collective trademark or collective service mark, but the collective may advertise or otherwise promote the goods or services sold or rendered by its members under the mark.

A collective membership mark is a mark adopted for the purpose of indicating membership in an organized collective group, such as a union, an association, or other organization. Neither the collective nor its members uses the collective membership mark to identify and distinguish goods or services;

rather, the sole function of such a mark is to indicate that the person displaying the mark is a member of the organized collective group.

Collective trademarks and collective service marks indicate commercial origin of goods or services just as “regular” trademarks and service marks do, but as collective marks they indicate origin in members of a group rather than origin in any one member or party. All members of the group use the mark; therefore, no one member can own the mark, and the collective organization holds the title to the collectively used mark for the benefit of all members of the group. An agricultural cooperative of produce sellers is an example of a collective organization, which does not sell its own goods, or render services, but promotes the goods and services of its members.

The collective organization might conduct advertising or other promotional programs in which reference is made to the mark in order to publicize the mark and promote the business of the members, but this would be merely informational use or a publicity display of the mark.

Source: USPTO website, May 2006

We can draw from the detailed explanations of the USPTO and other examples that the main problem for the protection of GIs by certification or collective marks consists in defining the group of authorized users, taking into account the great difficulty to reserve a GI through such a legal tool. The related problem is to impose the same standard of quality to all users of a GI, being or not members of the group of authorized users: according to these difficulties, the distinctiveness may lie rather in the graphic components of the trademark than on the mere GI as a verbal sign. The protection of GIs through certification or collective trademark does not seem to provide a thorough examination of the GI before its registration that would enable to establish a single set of standards for the products identified with the GI (with consultation of all interested parties).

A number of authors underline these imperfections and the costs and complications related to certification and collective trademarks for protecting GIs³⁰. The differences between sui generis GIs and certification trademarks have been summarized by Vivas-Eugui (2001, slightly shortened by us):

Table 2. Differences between GIs and CTMs

	Geographical Indication	Certification Trademark
Right holder	Public right The identification belongs to the State and the administration generally corresponds to the regulating council	Private right The property and administration belong to an association of manufacturers or producers
Design	Mainly designed to protect real identification of the origin and its link with quality and reputation	Designed to certify quality, characteristics, origin, materials, etc.
Duration of the protection	Must be protected as from date of registration up until the conditions that create it persist	Have to be renewed after a certain period of time. Fees have to be paid for each renewal
Basis of the protection	Protection based on <i>ex officio</i> (if provided by the legislation) and private actions	Protection based on private actions
Homonymous	Regulations for homonymous GIs	The issue does not exist: there must be just one right holder
Collateral protection	No automatic collateral protection	Collateral protection, and protection against use for other products

We do not agree on one point: GIs are not public rights, whereas this idea is commonly found in literature. Even if the State is, in some countries, the owner of the GIs; even if, generally, there is a

³⁰ See Marandan (2005)

large involvement of public authorities in relation with the protection and regulation of GIs, and even if that right is generally a collective one, GIs are intellectual property rights and, as such, private rights. In that respect, the distinction may be rather between a collective and an individual right, the role of the State deriving from that collective dimension, amongst other justifications.

Another complement to the above table is related to the duration of the protection: in some countries, the protection granted to GIs must be renewed periodically and fees must be paid by the users, like for trademarks. In addition, the recognition of the rights concerning a GI should normally be based on a pre-existing use and reputation; in that perspective, it is somehow absurd that the protection begin from the date of registration, provided that there is a registration. That conception, which may be used as an argument in conflicts between GIs and trademarks, may have very negative effects for GIs which are not yet registered, in particular in developing countries.

4.2.2. Distinction between GIs according to different kinds of products

The distinction between products mainly distinguishes wines and spirits from the other foodstuffs. When the *sui generis* protection is provided also to products other than foodstuffs, there is often a distinction between the two kinds of products. The special status provided for wines and, in some cases, for spirits also, is mainly due to historical reasons. We could even talk about “chronological” reasons, because the specific framework of protection for wine GIs has generally been established before other foodstuffs could benefit from the same kind of protection. In the EU, Member States have kept the competencies in defining wine GIs, like cantons have in Switzerland; in both cases, a general (respectively European and Federal) framework has been established, but the implementation by EU Member States and Swiss cantons leaves a large field of diversity.

In a lot of countries, the special legal means of protection (PDO-PGI type) are available for wines and spirits on the one hand, and for agricultural and processed agricultural products on the other hand. Hence handicrafts are often excluded from such a system, for cultural reasons and because the link to the geographical origin may appear as more difficult and complex to assess.

In the context of developing countries or, generally speaking, for countries where the establishment of a special legal framework of protection for GIs is prepared, such a distinction between products (wines and spirits, agricultural and processed agricultural products, handicrafts) may not be very relevant. It would surely support the universality character of tools like PDOs and PGIs that they could be applied to all kinds of products, provided that territorial (including natural and human) factors are involved in the specific characteristics of the products.

4.2.3. Federalist complexities

The legal and institutional situation of GIs in a country with a federal system where sub-entities (states, cantons) may also be complicated by sub-entities initiatives, which could put them at odds with the federal authorities, including with regard to these authorities' negotiating positions at the international level.

As an example, the Quebec Province adopted in 2006 a law on PDOs and PGIs (and other qualifying designations), and a first PGI has been registered, whereas Canada is one of the main opponents to any progress in extension and enhancement of the protection of GIs in the context of TRIPS.

In Brazil, some States have specific laws and decrees which could concern a particular product (law 13949/2002 which defines production conditions of “Cachaça” in Minas Gerais) or promote specific public policies (law 12.117 /2002 in Santa Catarina). The Santa Catarina law n.12.117/2002 was elaborated and voted after an important agricultural crisis in 1996 and aimed to promote better quality in agricultural products. The law defines five quality signs, two of them being related to GIs. This law could fill some gaps of the federal legislation. However it is very criticized

because it questions the competence of the federal State and its federal administrative body for the examination and registration of geographical indications (INPI). Today, the recognition of the geographical indications under the Santa Catarina law is limited to that State. For this reason, more and more producers directly address their requests to INPI, respecting the federal law.

The situation may also be complicated within a country when action is taken by bodies at a territorial level without any legislative power. Currently there are no legal provisions specific to a sub-national level in Italy. However an interesting discussion on special protection scheme at sub-national level is currently undergoing amongst Municipalities and the Ministry of Agriculture on the “Municipal Denomination (De. Co.)”. This initiative evidences the need of a more differentiated and lighter tool of place-based qualification adding value for Origin Products. Some Municipalities wish to implement Municipal Denominations through a Register of initiatives and manifestations dealing with agri-food products, a Register of products which have obtained the Municipal Denomination, a municipal commission approving Codes of Practice and allowing the use of the De. Co. logo. The De. Co. logo is given to agri-food products exclusively “coming” from the municipal territory and respecting the Code of Practice built up by producers and or processors of a certain municipality. The intent of the De. Cos is allowing valorisation and protection for those productions which are too limited in mass and value to face the high costs of PDO or PGI certification. However the Ministry of Agriculture states that the De. Co. protection scheme is illegitimate and unauthorized as any trademark based on the origin of raw materials out of Reg. EC 2081/92 protection scheme. Therefore Municipal Denominations remain a valorisation framework without legal value for Origin Products³¹. Moreover, the EC Court of Justice could find that such a place-based quality sign would be contrary to the free circulation of goods, as it was the case for other national initiatives of that kind.

4.3. The institutional aspects

4.3.1. Institutions in charge of the definition and registration of GIs

As for the examination of applications for the registration of trademarks, the definition (delimitation of the geographical area, specification of methods of production and characteristics of the products...) and registration of GIs require specific competencies in order to be efficient and applicable.

A number of countries (e. g. France, Switzerland, Argentina) have established specific administrative bodies for the examination and registration of PDOs and PGIs, under the authority of the Ministry of Agriculture; these bodies include the expertise and opinion of representatives of the agricultural sector, lawyers, scientists, organizations of consumers, other public authorities, etc.

The registration procedure may also include, when it is necessary, arbitral or negotiation frames supported by the administration, sometimes with the involvement of regional authorities (Italy, Switzerland).

As the definition of a code of practices (including the delimitation of the geographical area) results from a convention on quality, it obviously requires the participation of all interested parties to a negotiation which generally ends by a compromise. The process can last a long time, but the result is, in such conditions associating broad expertise and open negotiation frame, more solid, coherent and defendable than when the registration of a GI is made on an incomplete and partial basis.

³¹ Analysis drawn from the SINER-GI WP1 checklist for Italy (G. BELLETTI, T. BURGASSI, A. MARESCOTTI, S. SCARAMUZZI)

In a growing number of countries, and especially in developing ones newly establishing a specific GI system, the management of that system is attributed to the office of intellectual property.

4.3.2. Control issues

For GIs whose legal protection frame includes specification, a control system is generally considered as obviously necessary to ensure the quality requirements are met. That does not prevent, of course, the regular controls made by public authorities in charge of frauds relating to foodstuffs and goods. The control of GI products may be done by public or private bodies, but in the last case public authorities exercise a supervision on the control systems.

The costs of control/certification for recognised GIs remains a quite obscure field in scientific studies³². The difficulty in addressing that topic is to evaluate direct and indirect costs, and to take the characteristics of each supply-chain into account: number of producers and processors, volumes, value of the products, etc. Another difficulty is to distinguish between normal costs of quality insurance and the additional costs specific to the RGI requirements. Finally, a comprehensive assessment of the question should include the costs for the supply-chain but also the costs for the public authorities (mainly the administrative supervision of the control systems), also with the difficulty of distinguishing normal costs related to the monitoring of foodstuffs and goods, and the additional costs specifically related to GIs.

Example of PGI Tuscan Olive Oil³³

The strong fragmentation of supply chain implies that all the firms using the PGI ask for the services of the Consortium (Consorzio di tutela dell'Olio di Oliva toscano). The latter supports the process of documentation and traceability of the product and puts at Certification body disposal the results of its activity, thus limiting the direct involvement of the Certification body (an independent and accredited organism, as requested by the Italian rules implementing European PDO-PGI regulation) and hence the associated costs which are to be paid by the firms. The activities of the Certification body (inspection and certification) and of the Consortium (support activities) are very strongly bounded, so it's very difficult to separate the costs related to the Consortium services from the Certification body ones. Even if it is possible, up to now no firm has addressed itself directly to the Certification body, and there is no evidence of the tariffs that would be applied in this case (probably they would be much higher than those in column 2 of table 1). This indicates that the Consortium, as an intermediate organisation, economises some functioning costs of the PDO-PGI system. The structure of Tuscan Olive Oil direct certification costs (see table 1) is strongly influenced also by the nature of controls, and in particular by the costs of organoleptic and physical-chemical analyses, that are fixed for each bottling lot of oil. These costs have to be born only by the firms that bottle the oil (olive growers, olive mills, or specialised professional bottlers), which have to pay a minimum fare of € 309,87 (+ VAT) per lot: this amount includes all the analyses, control and bureaucratic costs, and the net quota due to the Certification body.

Table 3. The Olio Toscano PGI: direct certification costs and Consortium costs

	PGI certification costs	Consortium costs
Agricultural phase		
Fixed Share (per capita)	€ 15,00 una tantum 1 st year	€15,00/year + € 11,00 una tantum 1 st year
Proportional share	-	-
Milling phase		
Fixed Share (per capita)	€ 15,00 una tantum 1 st year	€15,00/year + € 11,00 una tantum 1 st year
Proportional share	-	-
Bottling phase		
Fixed Share (per bottling lot)	€ 309,87	-
Proportional share (lots ≥ 800 Kg)		0,38 €/Kg

Source: Consorzio di tutela dell'Olio di Oliva toscano.

³² Cf BELLETTI; BURGASSI, MARESCOTTI, SCARAMUZZI (2006, forthcoming); COUILLEROT and THÉVENOD-MOTTET (2005)

³³ Drawn from BELLETTI, BURGASSI, MARESCOTTI, SCARAMUZZI (2006, forthcoming)

5. Conflicts in the protection of GIs

5.1. *Generic Vs GI*

The greatest danger for a GI to lose its geographical significance is not to be registered as a trademark, but to be recognised as a generic name. So it is not surprising that the argument that a geographical name has become a generic name is the main ground for oppositions to a registration as a PDO or PGI. Producers opposing the registration would try to prove the long and general use of the name out of the original geographical area, and to demonstrate that the name is understood by consumers as related to the type of the product, or even to a way of consuming it (case *Raclette du Valais*).

5.2 *Trademarks and GIs*

It may be a consequence of a process of genericization that a GI could be registered, in combination with other words, as individual trademarks. But the registration of individual trademarks can also be a serious problem when considering the recognition of a GI as such. For example, in Lebanon and before the establishment of a specific legal frame of protection for GIs, 24 individual trademarks including the GI Taanayel have been registered for milk products, using the reputation attached to the special cheese originating from the region of Taanayel.

Problems between GIs and trademarks can occur when the IP office has no good information or procedures about GIs and registers trademarks comprising GIs. Most of the conflicts would be avoided if no verbal trademark consisting in a GI was registered, and if no trademark including a GI would be registered for products not having the designated origin.

5.3. *Conflicts with producers within the geographical area*

For GIs which are protected under general rules such as unfair competition or under trademark laws, there may be unfair competition or conflicts between producers complying with collective specification on processing methods and quality; but the cases would rarely go before courts, because no exclusivity on the GI is recognised. Cases of imitations or usurpations of a registered trademark would be treated like any such case regarding the trademarks law, and are not specific to GIs.

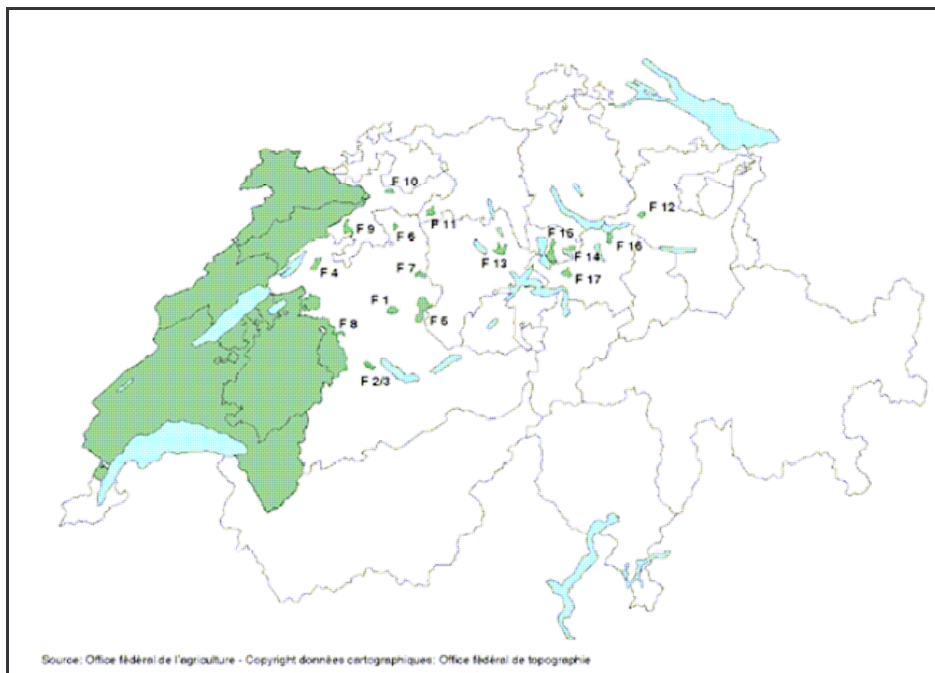
When a GI is registered (RGI), the conflicts would normally arise during the consultation process throughout the examination of the application for registration. The oppositions to the application coming from the delimited geographical area are usually based on the requirements regarding the processing methods, or other technical aspects of the specification. The negotiations within the supply-chain on these matters generally take place during the elaboration of the application; but in some cases, public authorities have to arbitrate, or to organize an arbitration frame, in order to reach a consensus.

After the GI is legally recognised, producers who, for any reason, would refuse or would not be able to comply with the production requirements, would generally have a transitional period during which they are allowed to go on using the GI for their products. After the end of that period, they must either cease to produce the recognised GI product, or to name it in a different way when the shape or other characteristics are not specifically protected in conjunction with the GI.

5.4 Conflicts with producers out of the geographical area

In relation with the process of recognition for a GI, producers in neighbouring areas or even in remote areas of the same country can claim their right to be included in the delimited geographical area on the ground of their pre-existing use of the GI. That was for example the case for **Gruyère AOC** in Switzerland, whose geographical area had to include some cheese factories which have produced **Gruyère** in good faith for years.

Geographical area of PDO Gruyère in Switzerland



Two types of conflicts may be identified:

1. Conflicts with producers located in the same part of country, or in other parts of the same country, or in bordering areas, who used the GI in good faith for years and on products having a similar quality level to what is required with the recognised GI: a negotiation is generally possible and often successful, some GIs being even shared between two countries like it is the case for **Tokaj** between Hungary and Slovakia (there is a viticultural continuity in the bordering region), whereas France had to prevent the use of "Tokay d'Alsace" and Italy the use of "Tocai dal Friul".
2. Conflicts with producers, either in a different location in the same country or in other countries than the one where the recognised GI (RGI) originates, who are relying on the reputation of the RGI by using it, generally on products which do not meet the same requirements than the RGI regarding, for example, processing methods and quality: in those cases, it is obvious that no agreement may be reached and that legal or administrative actions (sometimes through bilateral agreements, like it is often the case regarding wines) are the only way to get effective protection for the RGI.

6. Effects and effectiveness of different legal and institutional contexts for the protection of GIs

6.1. Signification and extent of the protection of GIs

6.1.1. How protection applies in practice

Protecting a GI may have two main significations³⁴:

- a. Defining which producers have the right to use the GI and to take actions against misuses, on which products (right to use, positive right)
- b. Preventing the use of the GI on products which do not originate from the designated geographical area, or which do not meet the requirements for the legitimate/legal use of the GI (right to prevent the use, negative right)

This is according to a strictly legal approach of the subject. A wider approach would add a third meaning, which is:

- c. Preserving a specific product and its “traditional” features, know-how, practices, animal breeds, etc., in relation with the notion of heritage

This last meaning is at the interface between the **GI** and the **product**; adding confusion, as the “product” can be understood as the “ideal” or in the most concrete sense (real products which are marketed).

In other words, the protection of GIs may be related to the following questions:

- a. **Who** has the right (this includes more or less detailed specifications)?
- b. **How** illegitimate or incorrect use can be prevented or punished?
- c. **What** are the characteristics of the product in relation with heritage?

In some cultures, it may be difficult to integrate the unity between the GI and the product: «for European countries, and particularly for southern European countries, the geographical indication IS the product; for example, the denomination *Beaufort* signifies all the elements which are included in the cheese it designates: area of production, breeds of cows and their food, methods of production, etc., and also all the immaterial substance the denomination is endowed with: tradition, landscape, regional identity value, etc. For countries like the United States, Australia and Argentina, the geographical indication is, in most cases, only considered as one of the distinctive elements of a trademark, the trademark always remaining the dominant means of distinguishing a product in the market, in comparison with geographical indications. The geographical indication is not identified with a particular product, nor reserved to a particular product; but rather it is, in most cases considered as information put on the product, like the name and address of the producer.»³⁵

This is why a strictly legal approach, based on more common intellectual property tools such as patents and individual trademarks, often fails to solve the debate. In that sense, it is not surprising that the GI question comes more and more in connection with the quite new debates on traditional knowledge and genetic resources; it is so, not only because these topics all refer to a collective fact (investment, know-how, reputation, culture, tradition, rights...), but also because they all challenge the modern normative trend in intellectual property rights and endanger economic

³⁴ Cf. Rochard (2002), p. 5.

³⁵ Thévenod-Mottet (2001), p.6.

interests based on more generally admitted rights and practices (innovation, individual initiatives, widest competition, mass production, delocalizations, etc.).

6.1.2. GIs common labelling

The protection of GIs may also have implications on the presentation of the products: the words “Protected Denomination of Origin”, the acronym “AOC”, a public or collective graphical sign, even common features related to the labelling or packaging of the products must or can come in addition to the GI itself.

In some countries, there may be a public mandatory or optional logo for PDOs and PGIs, like in EU.



PDO



PGI

Norwegian logos



PDO



PGI

In Switzerland, as no public logo was established, most of the PDO-PGI groups of producers have constituted an association with common logos which are used by its members.



PDO



PGI

6.2. Difficulties in concrete application of legal systems

There can be the case that a specific legal framework for GIs is provided, but no GI is registered; or some GIs have been registered, but they are not used by the producers. More generally speaking, a lot of countries are in the process of establishing a coherent and working framework of protection specific to GIs, in particular in Asia and South America. In this light, it may be very difficult to get a clear information on the real legal, social and institutional status of GIs.

6.2.1. New EU Member States and some other European countries

In the new EU Member States a common EU legal approach is used for the definition and protection of GIs. The applicant and producer does not have the exclusive right to use the indication or does not become the exclusive owners of it. The registration presumes rights of other producers to use GI if they meet the standards and regulations. In practice, there are few cases of new producers joining the existing PDO / PGI producers groups. The system of protected designations of origin and geographical indications is more developed in the Czech Republic, Slovenia, Hungary, and in Poland but it is quite unpopular in the Baltic countries where there are very few registered PDO/PGI products.

Although the legal framework for GIs is in place within the EU, in the majority of new EU member states (except perhaps Czech Republic and Slovenia), the number of registered GI products is quite low. The reasons for that are:

- ✓ Existence of self-sufficient national food quality labelling systems which refer to origin, but are not exactly GIs (for example “Green Spoon” in Latvia, “Approved Estonian Taste” in Estonia, “KLASA” in Czech Republic, “Get to Know Good Food” in Poland);
- ✓ Lack of information about PDO/PGI system among producers;
- ✓ Organisational problems and difficulties to get the groups of producers to cooperate;
- ✓ Lack of economic incentives to register PDO/ PGI products;
- ✓ Low recognition of contribution of GI protection to the commercial performance of food producers, contribution of such products to food supply chains and development of rural areas.

The PDO/ PGI system is more advanced in the wine sector and in wine producing countries. Wine sector is of particular importance for countries like Hungary, Slovenia, and also for acceding countries Romania, Moldova and Georgia. Special Wine Acts and Wine Registers are adopted in Malta, Slovenia, Hungary, Georgia. This system is especially advanced in Hungary. In Georgia difficulties are reported to prevent industrial copies of its wines in EU countries.

New member states pursue different strategies in support of GIs. Countries like Malta, Slovenia, Hungary protect GIs as collective marks and give advantage to producers groups. In Poland applications are usually made in the name of producer groups (e.g. farmers associations, producers and/or processors dealing with the same product). In Baltic countries initiative to develop GI products and other food quality labelling systems is undertaken rather by individual entrepreneurs and market promotion organisations. Table 4 summarises the legal framework and current activities in registering origin products in the new EU member states and acceding countries.

Table 4. Laws, controlling institutions, support measures and registration of PDO/PGI products³⁶

	Laws	Adopted	Controlling institutions	Additional measures	Registered products	Main products
Cyprus	<i>Bill on the Protection of Cyprus Geographical Indications</i>	2001	Department of the Registrar of Companies	No information	1 PDO registered	no information
Czech Republic	<i>Act on Trade Marks</i> <i>Act on the Protection of Designations of Origin and Geographical Indications</i>	2003 2001	Czech Agriculture and Food Inspection Authority Industrial Property Office	Collective trademarks National Domestic Food Promotion Program	568 KLASA products 200 registreed PGIs and PDOs	Beer, Bread, Cheese, Flowers, Fish, Meat, Fruit
Estonia	<i>Geographical Indication Protection Act</i>	2000	State register of geographical indications Estonian Patent Office	<i>Approved Estonian Taste</i> label, approved by Estonian Accreditation Centre	4 PGIs 230 <i>Approved Estonian Taste</i> products	Meat, Dairy, Bakery, Fish, Vegetables, Beverages
Hungary	<i>Protection of Trademarks and Geographical Indications</i> <i>Decree on geographical indications</i>	1997 2004	Ministry of Agriculture and Rural Development and National Council of Origin Protection	No information	8 PDOs 2 PGIs	Wine, fruit, Meat, Flowers
Latvia	<i>Law on Trademarks and Geographical Indications</i> <i>The Protection Procedure of Geographical Indications</i>	1999 2004	Ministry of Agriculture Committee of Geographical Indications	<i>Green Spoon Label</i> <i>Growing Green in Latvia</i> Marketing Council	175 Green Spoon products, 26 producers awarded the Green Spoon label, no registered PDO/PGIs	Dairy, bakery, fruits
Lithuania	<i>Regulation on the protection of geographical indication and designations of origin</i>		Ministry of Agriculture Committee of Protected Designations	<i>Ekoagros</i> label and certification	7 applications for PGIs at EC	Cheese
Malta	No special laws, <i>Trademark Act XVI ; Wine Act</i>	2000	Department of Agriculture Wine Regulation Board	Collective marks owned by associations	no information	Wines
Poland	<i>Act on Geographical Identifications of Agricultural Products</i>	2004	Agriculture and Food Quality Inspection; MoARD	Label Get to know good food	5 registered PGIs; 3 applications	Cheese, honey
Slovakia	<i>Act on Trademarks</i> <i>Act on designations of origin for products and geographical indications</i>	1997 2003	Register of GIs Industrial Property Office	Collective trade marks	2 products ongoing registration in the database of European Commission	Cheese, mineral water

³⁶ Analysis based on WP1 Special Report "Geographical Indications in the New Member States of the European Union". Authors: Talis Tisenkopfs. Anna Some, Juris Tipa

Slovenia	<i>Law on Industrial Property</i>	1992	Ministry of agriculture, forestry and foods	No information	30 PDO / PGI products	Cheese, Honey, Salt, Wines, Olive oil
Other Central and East European countries						
Croatia	<i>Law on Protected Geographical Indication and Protected Designation of Origin</i>	2003	Ministry of agriculture, forestry and water management State intellectual property office	No information	9 PDO products	Meat, Cheese, Olive oil, Wine, Strong alcohol drinks
Georgia	<i>Law on Appellations of Origin and Geographical Indications of Goods</i>	1999	National Intellectual Property Center State Register of the Appellations of Origin and Geographic Indication	Determination of national government towards protection of GIs, voluntary initiatives of producers associations	37 PDO products	Wine, Mineral water, Brandy
Moldavia	<i>Law on Trademarks and Appellations of Origin of Goods</i> <i>Law on Wines</i>	1995 1991	State Agency on Intellectual Property Protection	No information	No official registrations	Wines
Romania	<i>Law No. 84/1998, on Geographical Indications</i>	1998	Ministry of Agriculture State Office for Inventions and Trademarks	No information	243 locally branded and recognised products	Wines, Spirits, Dairy products

6.2.2. Developing countries

Vietnam is a good example of a quite unclear situation in countries where the legal framework for GIs has been recently introduced. At the initiative of a French cooperation program (especially motivated by the protection of Cognac) and with the help of INAO, an "Arrêté gouvernemental" on October 24th created the protection of names. It was modified in 2001. This is placed under the authority of the National Office of Industrial Property, from the Ministry of science, technology and environment. A directive from this ministry concerns all property rights including GI : N° 3055 / TT – SHCN published on December 31st of 1996. It was not possible until now to get a translation of this directive in order to know exactly what it is supposed to establish in terms of procedure, official bodies for recognising and for controlling.

But, in the same time, other ministries have an activity in the area of GIs : as an example, the Ministry of aquaculture and the Ministry of agriculture and rural development (MARD) have some legitimate concern and internal competencies (on code of practices, on questions of delimitation) for helping the public decision/making.

Moreover, the authorities of the various provinces in Vietnam are also competent as far as the first level of the procedure is concerned : each province can determine relevance of protecting GI within its territory. It is also due to the fact that the law on cooperatives has been recently adopted.

So, we can say that, at the moment, the institutions are not stabilised in Vietnam. There is a lack of legislation, a lack of clear legal status of the local organisations (even if the law is clear, the local authorities do not have a clear vision of private business due the recent liberalisation of the national economy) and a lack of organisation of the local producers and processors.

Vietnam is in transition and according to the different regions, local producers do not always face the same interest for protecting GIs. To some extent, the first cases of recognised PDOs (the fish sauce **Nuoc Mam Phu Quoc** and the tea **Che shan tuyet Moc Chau**) have been the results of a top-down process decided directly by the government whereas the two other cases (lychee and perfumed rice) of building up locally new projects in a bottom-up process have been triggered by researchers.

There is a Swiss cooperation project with Vietnam related to all intellectual property rights, including GIs. In this framework, a specific law on GIs is about to be adopted. But, even if a specific and coherent legal and institutional framework is established, implementation of the law remains to be seen, as there are about 100 pending applications for GIs registration. A recent expert mission³⁷ in Vietnam stressed that there would be a great need for support in several fields:

- Communication and clarification efforts to distinguish between developed and well-known GIs, existing GIs which should be developed and GIs which could be defined for products having the required characteristics but being currently traded without any GI
- Elaboration of administrative guidelines for the registration of GIs (how to deal with questions related to plant varieties and animal breeds, methods of production, labelling, etc.)
- Inventory of potential GIs based on available information
- Several anthropo-technological analysis on GIs supply-chains and collective organisations, in order to adapt traceability and control requirements to the reality
- Analysis of the possibilities for producers to organise themselves collectively in relation with the existing economical and political frameworks
- Identification of usurpation cases and denunciation, in particular in developed countries, in order to demonstrate the legal and economical impacts of the protection of GIs

It would appear from some co-operation programs with developing countries that there are certain specific problems concerning the effective implementation of legal frameworks established in those countries. However, there is not yet much scientific literature on the matter.

³⁷ Special Program of Cooperation between Switzerland and Vietnam, Mission on GIs, Report by F. BRAND, November 2005 (Swiss Institute for Intellectual Property Rights and Swiss Secretariat of Economy).

7. Evaluation grid on legal and institutional aspects of GIs

7.1 Basis of evaluation

We assume that, without denying the differences between countries in terms of legal culture, economic development, agricultural policies, food heritage, etc., there is a trend in protecting GIs through a wide spectrum of legal and institutional frameworks. That trend, which does not equally apply to all GIs, would explain why some GIs pass through a protection framework to another one. As a matter of fact, the use, value and importance of GIs are related to on-going evolutions in globalization of trade, society/consumers wishes, agricultural policies, etc. These trends and connections with non legal issues can be easily found even in countries which are presently opposing any evolution in the direction of a more prescriptive system or a better protection for GIs.

In a previous study (Barjolle and Thévenod-Mottet, 2003), we drew a first “historical trend”:

1. Long standing legitimacy through legal actions³⁸, in a large number of countries, particularly France and Italy, associated with the development of national and international trade in relation to the decreasing costs and duration of transports, allowing a rapid expansion of commercial productions. Domestic and foreign imitations do not comply with the traditional and specific production methods, causing unfair competition and misleading of the consumer in relation with his expectations regarding a specific product with an established reputation. The collective aspects of using a geographical indication require internal regulations within groups of accredited producers, in order to endeavour to prevent imitations from outside the region of origin by mean of legal judgements in favour of rightful claimants at the expense of imitators.
2. First, legal provisions on official registration procedures are introduced in order to move from a system of judicial decisions on each case (case law) or from legal provisions which are very specific to a product or to an area of production³⁹, to the introduction of a *per se* system of rules⁴⁰, in order to take into consideration the large number of similar cases and relieve the courts of dealing with corresponding disputes.
3. The system is unified, even at the national level (for example, in France, the Institut National des Appellations d'Origine (INAO), which initially was in charge of wines and spirits, is also in charge of all the PDO since 1990). Processed foodstuffs other than wines, spirits and cheeses, and raw products such as vegetables benefit from an extension of the legal system initially introduced for wines.

As previously said, there is a “natural” need to ensure that any legitimate producer could use the GI, and to not only protect a GI against incorrect uses and usurpations from producers outside the geographical area, but also to protect a GI against misuses by producers being or claiming to be in the geographical area, especially with regard to the quality and characteristics of the product. The GI being the common capital of all the producers who use it, it generally comes a moment when they ask themselves for a public-established definition of the geographical area, and other characteristics. Even in countries of the New World, that trend is already actual for wines at least.

The perspective of establishing a specific (*sui generis*) protection for GIs may be opposed by countries which do not have such a legal tradition, for the following reasons:

³⁸ The role of the Middle Age guilds, which defined the quality standard required to use their marks generally in relation with a geographical name, could also be mentioned.


³⁹ For instance, see in France the laws of 4 August 1929 (appellations d'origine Cognac et Armagnac) and of 6 April 1935 (appellations d'origine des vins récoltés en Bourgogne délimitée).

⁴⁰ See the French law of 12 December 1973 protecting the “appellations d'origine contrôlée” and the “vins délimités de qualité supérieure”.

- a. they have (or believe they have) only a few GIs to protect, so they consider that the whole matter is an unbalanced administrative effort in favour of other countries which are also economic competitors
- b. they consider that the administrative burden is too high
- c. they consider that some or many of the GIs protected in their country of origin are generic names, those names being largely used by their own producers
- d. their general views on quality does rarely relate to the territorial link

In the perspective of the evaluation of legal frames, that historical trend can be adapted as presented in Table 3.

Table 5. 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			

The chronological perspective also differs from one country to another in relation with the international agreements and the effective application of specific legal means (Table 4).

Such a historical trend may also be analysed in terms of administrative scale (national, supra-national) and specific legal nature for GIs, according to the elements mentioned by Taubman (2001):

- a) “the trends towards international agreements that, in effect, pre-empt national decision-making about the IP status of particular terms: agreements at the international level concerning particular outcomes, in particular that a world’s status as a GI should prevail over other potential uses;
- b) the greater likelihood of the government administration making a preemptive judgement as to the status of a particular word, rather than determination based on assessment of its actual usage in the relevant linguistic community;
- c) the linkage together of these two trends, and their acceleration, through the introduction of GIs into trade negotiations, both trade negotiations at a bilateral level, and multilateral negotiations in the World Trade Organization (WTO) concerning the implementation and further development of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);
- d) this evolutionary pressure may lead over time to a change in the role of international IP rules: the traditional function of international agreements has been to provide for national treatment and minimum standards for the operation of processes within national legal systems to decide the status of individual IPRs; the role may lead towards

establishing a quasi-universal determination of the status of a single, specific claim for IPR status with less scope for considering local factors and for the operation of national legal systems. Notwithstanding the similar potential of the Madrid trade mark system, the GI system seems to be leading in this trend, fuelled by the strong linkage between trade negotiations and the protection of geographical indications that has been so evident this month at Doha”.

Table 6. Chronological perspective in protecting GIs

	Italy		Switzerland		Georgia	USA	Vietnam	Lebanon
Paris Convention	1884		1884		1991 (previously with Russia, since 1965)	1887	1949	1924
Stresa Convention	1951		1951		—	—	—	—
Lisbon Agreement	1968		—		2004	—	—	—
WIPO	1977		1970		1991 (previously with Russia, since 1970)	1970	1976	1986
TRIPS Agreement (accession to WTO)	1995		1995		2000	1995	—	—
Membership of the International Organization of Vine and Wine	Yes		Yes		Yes	No	No	Yes
	Wines	Agro-food	Wines	Agro-food				
Specific legal means of protection for GIs	1712 (only for Chianti ⁴¹)	1954 (only for cheeses) 1992 (all products)	1988	1997 (previously under an ordinance without registration for cheeses)	1999	1978 (only for wines)	2001 (implementation remaining problematic, a new law will be adopted)	2000 (only for wines)
Establishment of a specific institutional system for the registration of GIs	1963		—	1999	1999	No Except approved viticultural (BATF)	?	—
Registration of national GIs	1963	1954 (only for cheeses) - 1970 (Parma ham) and others	1988	1999	2000	1978	2001	—
Registration of foreign GIs	—	—	—	—	—	—	2001	—
Establishment of a control system for GIs	1963	1954 (only for cheeses) 1992 (all products)	1988	1998	1999	?	—	—
Establishment of a certification system for GIs		1992 (all products)	—	1998	1999	—	—	—

⁴¹ Notice of Grand Duke for delimitation of zone of production for Chianti wine - National decree of 31/7/1932 for Chianti Classico

Crossing all the elements mentioned above, we can distinguish 4 types of contexts, which are ideal types; real contexts may vary in regard to some secondary characteristics (Table 5).

The table must be read from left to right; that is to say, it is presumed that type C is also endowed with the characteristics of type B. The differences between types from left to right may also be of a chronological nature.

7.2. Grids of evaluation

Table 7. 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.
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

The GIs themselves could also be assessed according to a number of criteria, without considering the formal legal and institutional general context. So a GI could be of type B even in a context of type D.

Table 8. Types of GIs according to their legal and institutional features

Requirements on quality ⁴² (methods of production, organoleptic characteristics...)	1	2	3	4	5
Involvement of public authorities (registration, administrative support, management...)	1	2	3	4	5
Control/certification (auto-control, control by public authorities, certification...)	1	2	3	4	5
Organisational strength (legal recognition of interprofessional body, promotion...)	1	2	3	4	5
Effectiveness of the protection (legal basis, support from authorities...)	1	2	3	4	5

Types of GIs	Type A	Type B	Type C	Type D
Evaluation ⁴³ (total of all criteria)	5-10	10-15	15-20	20-25

7.3. Examples of evaluation

Example type B: ***Dried Meat from Grisons (Bündnerfleisch)*** PGI (Switzerland); evaluation: 13

The raw material can come from anywhere in the world, and the specification is of very low level of requirements, allowing industrial and non traditional methods of processing. When labelled and sold by retailers in Switzerland, Swiss raw material is used for commercial reasons (the indication of source for meat being mandatory). Evaluation: 1.

Dried Meat of Grisons was the first recognised GI in Switzerland, so it benefited obviously from a public support at the beginning, due to the reputation of the product also abroad. But consumers' associations fought and are still fighting against that registration on the ground that the raw material comes not from Switzerland and so the consumers are misled; that concern found consequent political support in the Parliament, and the question of revoking or modifying that registration is still discussed. In addition, Dried Meat of Grisons is the only product that the Swiss Association for the Promotion of PDOs-PGIs cannot include, due to its rule that raw materials must come from Switzerland. For the above mentioned features, the score is 1.

There is a certification by an independent organism, as it is requested for Swiss PDOs and PGIs. But, due to the low level of requirements in the specification, controls and procedures are lighter than for other products. Evaluation: 4

The collective organisation is reduced to the minimum, and there is no collective promotion. Score: 2.

The GI has a long-established reputation in many countries, and the registration as a PGI appeared as the best mean to reserve the designation to producers from Grisons; in that perspective, the producers of Grisons succeed to prevent a genericization process affecting their designation. Score: 5.

⁴² Here the term "quality" is exclusively used in the sense of a convention on characteristics which may get a recognition on the market ; that "quality" is not automatically related to the "quality" of real products in the common meaning.

⁴³ The aim of the evaluation is not to rank GIs initiatives but rather to be able to distinguish several types of legal and institutional contexts; it is not a scale of quality for the products concerned, and it does not take into account the external impacts of the GI systems.

Example type D: **Gruyère** AOC (Switzerland); evaluation: 24/25

The geographical area has been delimited ad minima; quality requirements include raw milk, a limitation of distance for the supply of milk, natural yeasts, long ripening, etc. It can be evaluated at 5.

The involvement of public authorities, both national and cantonal, is relatively high due to the importance of that supply-chain; but it was especially high during the elaboration of the application for PDO and has decreased, so it can be evaluated at 4.

Like any other Swiss PDO-PGI, the products are certified by an independent certification body on the basis of the European norm EN 45'011; in addition, the certification body for **Gruyère** is constituted by West-Switzerland cantons, the controls themselves being done by public inspection bodies (that may change in the future). The present situation may be evaluated at 5.

The Interprofession du Gruyère is the most powerful PDO interprofessional body in Switzerland; it has its own inspectors, can take measures regarding the quantities, etc. It can be evaluated at 5.

The effectiveness of the protection is related to the quite non distinctive shape and appearance of **Gruyère** in comparison with other cheeses made from similar processes; in addition, the name is still used in other countries (especially according to the Stresa Convention). But, at least in Switzerland, the geographical indication is strongly protected with a great involvement of public authorities, so it can be evaluated at 5.

Example type D: **Parmigiano Reggiano** PDO (Italy); evaluation: 22/25

1) Requirements on quality (methods of production, organoleptic characteristics...): both the production of milk and its transformation into cheese take place in the provinces of Parma, Reggio Emilia, Modena, Bologna to the west of the Reno River and Mantua to the east of the Po River.

Parmigiano-Reggiano is strictly bound to its place of origin. Quality requirements include natural feed, and high quality of milk with no additives. During the long aging process, natural fermenting agents in the milk give the cheese its particular flavour and texture, in other words, its typicality. This aspect can be evaluated at 5.

**Parmigiano-Reggiano in Figures**

12 months of minimum ageing
16 litres to make 1kg
20-24 average ageing of the wheels (in months)
38 average weight of a wheel (in kg)
492 number of dairies
600 litres to make one wheel
4.750 producers of milk
251.000 cows
3.136.191 number of wheels produced in the 2005
0 additives

2) Involvement of public authorities (registration, administrative support, management...): the involvement of public authorities is high due to the important economic role covered by Parmigiano Reggiano and to the importance of that supply-chain; it was especially high during the elaboration of the application for PDO, so it can be evaluated at 5.

3) Control/certification (auto-control, control by public authorities, certification...): the Consortium is officially charged with the important and difficult task of applying the marks and stamps of Parmigiano-Reggiano cheese as the distinctive symbols of its compliance with the Protected Designation of Origin Regulation (PDO), certified by the supervisory structure. In addition to this, the law entrusts the Consortium with the supervision of the cheese's production and trade. For this task, the Consortium relies on the work of supervisory agents, who have the qualification of policemen.

In particular, Parmigiano Reggiano is certified by "DIPARTIMENTO CONTROLLO QUALITA (DCQ-PR)" <http://www.dcq-pr.it/cms/index.php>. The procedure of DCQ-PR complies with the following different schemes:

1. Norma UNI CEI EN 45011 – product certification
2. D.M. 29/05/1998 – Procedure for certification Body of PDO / PGI.
3. Parmigiano Reggiano Code of Practice
4. Ministero delle Politiche Agricole e Forestali – Instruction of Control plan for cheese (October 2001)

Because this system can generate misunderstandings between consumers, especially those who do not know the reputation and the history of the Consortium, we evaluated this aspect at 2.

4) Organisational strength (legal recognition of interprofessional body, promotion...): in 1934 the producers of Parmigiano-Reggiano founded the "Consorzio del Formaggio Parmigiano-Reggiano".

The Consortium for Parmigiano-Reggiano Cheese gathers all the dairies where the cheese is made. The Consortium's tasks are:

- making sure that Parmigiano-Reggiano cheese is made in compliance with the strict standards imposed by the "Production Regulation";
- protecting Parmigiano-Reggiano cheese from imitations;
- promoting and disseminating knowledge and consumption of Parmigiano-Reggiano cheese;
- improving the quality of Parmigiano-Reggiano cheese to safeguard its typicality and unique features.

This aspect can be evaluated at 5.

5) Effectiveness of the protection (legal basis, support from authorities...) : Parmigiano-Reggiano cheese is a product with the Protected Designation of Origin (P.D.O.), in compliance with the European norm contained in EEC Regulation 2081/92 and with the recognition by Regulation (EC) no. 1107/96. Cheese produced according to the rules contained in the Production Regulation is the only cheese entitled to bear the Parmigiano-Reggiano mark and, therefore, the wheel must display all the marks required for identifying and distinguishing the product.

One of the most important measures adopted by the Consortium with the aim of protecting the product sales was that of introducing in 1964 the mark of origin of the dotted inscription "Parmigiano-Reggiano" encircling the wheels, thereby conferring to the cheese its current external appearance. In spite of this, there are a lot of case of usurpation in the world (Parmesan), but the system is very active to protect himself, so this aspect can be evaluated at 5.

Example type D: **Pecorino Toscano** PDO (Italy); evaluation: 21/25

The geographical area is wide (it includes all the Tuscany Region, and a small part of Lazio and Umbria regions); quality requirements include sheep milk coming from breedings in the PDO area, transformation and seasoning inside the PDO area and a minimum seasoning time for both two typologies of Pecorino Toscano. This is to allowing the various types of Pecorino to bear the Tuscan name. Evaluation: 3

The involvement of public authorities, both national and regional, was very high during the elaboration of the application for PDO, due to the importance of that supply-chain: before becoming a PDO the Pecorino Toscano was already protected with a national protection system of local production called Denomination of Origin (D.O.); now the attention is decreased, so it can be evaluated at 4.

The Pecorino Toscano PDO is certified by an independent certification body authorized by the Ministry of Agriculture on the basis of the European norm EN 45011; in addition, the Consortium of Pecorino Toscano producers (which is an interprofessional body), besides giving services in terms of documentation, administrative support and promotion of the product, controls quality of products made by associated producers, who are the whole group of Pecorino Toscano PDO producers. The present situation may be evaluated at 5.

The Consortium of Pecorino Toscano has its own inspectors who can take measures regarding to the quantities, and it realise informational collective promotion campaigns. All firms belong to the Consrtium. It can be evaluated at 5.

The effectiveness of the protection is related to the quite non distinctive shape and appearance of Pecorino Toscano PDO in comparison with other sheep cheeses made from similar processes; this cheese has still many problems of misleading, both at national (even regional) and international level, but the situation is very improved thanks to the PDO system. Evaluation: 4.

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9. Annexes

9.1. Definitions of GIs

Country	Definition	Source
African Intellectual Property Organization	GI: same wording as TRIPS	Bangui Agreement, 1977, revised in 1999
Argentina	GI: same wording as TRIPS Denomination of Origin: name of a region, a province, a department, a district, a place or an area within the national territory, which is registered in order to be used to designate a product originating from that place, and whose quality or characteristics must be exclusively or essentially attributable to the geographical environment including natural and human factors	Law 25.380 on Geographical Indications and Denominations of Origin for agricultural products and foodstuffs
Chile	Denomination of Origin: identifies a product as originating from a country or a region or a locality of the national territory, when the quality, reputation or other characteristic of that product are essentially attributable to its geographical origin, considering in addition the natural and human factors which influence the characteristics of the product. GI: identifies a product as originating from a country or a region or a locality of the national territory, when the quality, reputation or other characteristic of that product are essentially attributable to its geographical origin.	Law on Industrial Property, 1991
	Viticultural Area and Denomination of Origin for wines and spirits: determined area in the national territory, in which climate conditions, soil, grape varieties, vine-growing and oenological practices are homogeneous.	
Costa Rica	Denomination of Origin: geographical designation, expression, image or other sign related to a country, a region or a locality, used to designate a good as originating from the territory of a country, a region or a locality, and the quality or characteristics of which are exclusively attributable to the geographical environment, including natural and human factors. GI: geographical name of a country, a region or a locality, which is used to present a good in order to indicate its place of origin, processing, preparation, harvest or extraction.	Law on Trademarks, 2000
Croatia	PDOs and PGIs: same wording as European Regulation	Law on PDOs and PGIs, 2003
European Union	Protected Designation of Origin: name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country, and the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area. Protected Geographical Indication: name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country and which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.	EC Regulation 2081/92 on PDOs and PGIs
France	Appellation of Origin: the name of a country, of a region or of a locality serving to designate a product which originates from there and the quality or character of which is due to the geographical location, comprising natural and man-made factors. In accordance with the	Consumer Code (1919, modified in 1966, and 1992)

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	terms provided for hereinafter, these products may receive an <i>appellation d'origine contrôlée</i> if they have a duly established reputation and are the subject of approval procedures.	
Georgia	<p>Appellation of Origin: a modern or historical name of a geographical place, region or, in exceptional cases, a name of a country (hereinafter "geographical area"), used to designate the goods: (a) originating within the given geographical area; (b) the specific quality and features of which are essentially or exclusively due to a particular geographical environment and human factors; (c) production, processing and preparation of which take place within the geographical area. If a traditional geographical or non-geographical name conveys an impression that goods originate from given geographical area, and the requirements above are fulfilled, said name may be considered as an appellation of origin of goods.</p> <p>By way of derogation from provisions above, as an appellation of origin may be considered the name of a geographical area where raw materials of the goods come from the area larger than or different from said geographical area, if:</p> <ul style="list-style-type: none"> – the different boundaries of the geographical area and conditions for raw material production are determined; – there are inspection arrangements to ensure that those conditions are adhered to. <p>For the purposes of that derogation, only live animals, meat and milk may be considered as raw materials.</p> <p>Geographical indication: the name or any other sign, which indicates a geographical area and is used to designate the goods: (a) originating in that geographical area; (b) specific quality, reputation, or other characteristics of which are attributable to that geographical area; (c) production or processing or preparation of which takes place in the geographical area.</p>	Law on Appellations of Origin and Geographical Indications of Goods, 1999
India	<p>GI: indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.</p> <p>For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be.</p>	GI Act, 1999
Latvia	GI: a geographic name or other indication or sign used to indicate, directly or indirectly, the geographical origin of goods or services, including indications of the characteristics or features thereof, which are attributable to this origin.	Law on Trademarks and Geographical Indications
Lebanon	Appellation of Origin: name of the region or place or area of production. A wine can be designated with an appellation of origin only when its characteristics are related to the origin of the grapes, the place of vinification and the recognised geographical region comprising the natural and human factors.	Wine Law, 2000
Mexico	Denomination of Origin: name of a geographical region of the country, used to designate a product originating from that region, and the quality or characteristics of which are exclusively attributable to the geographical environment, comprising the natural and human factors.	Industrial Property Law
Moldova	GI: TRIPS wording	Law on Trademarks and Appellations of Origin of 1995
Norway	PDOs and PGIs: same wording as European Regulation	Regulations n° 698 of July 2002
Poland	GI: word indications which in an explicit or implicit manner designate the name of a place, locality, region or country (territory), which	Industrial Property Law of 30 June 2000

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	identify a good as originating in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to the geographical origin of that good.	
Romania	GI: TRIPS wording	Law n° 84/1998 on Marks and Geographical Indications
Switzerland	Indication of Source: any direct or indirect reference to the geographical origin of the products or services, including any reference to properties or quality which relate to geographical origin.	Federal Law on Trademarks and Indications of Source, 1994
	PDOs and PGIs : same wording as European Regulation	Federal Ordinance on PDOs and PGIs, 1997
	PDO: can be used for wines originating from a geographically defined area such as a canton, a region, a community, a place, a château or a domaine, if the wines comply with the requirements of the first category of quality, and with the requirements defined by the canton regarding the delimitation of viticultural areas, the grape varieties, the methods of cultivation, the sugar content, the yield per ha, the methods of vinification and the organoleptic test.	Federal Ordinance on Wine, 1998
Tunisia	<p>Appellation d'origine contrôlée : nom du pays, d'une région naturelle ou parties de régions d'où provient tout produit et qui puise sa valeur et ses particularités par référence à son environnement géographique constitué d'éléments naturels et humains.</p> <p>Les éléments naturels comprennent d'une façon générale le milieu géographique de provenance du produit avec ses particularités se rapportant au sol, à l'eau, à la couverture végétale et au climat.</p> <p>Les éléments humains comprennent notamment les méthodes de production, de fabrication ou de transformation et les techniques spécifiques acquises par les producteurs ou les fabricants dans la région concernée. Les méthodes de production doivent découler de traditions locales anciennes, stables et notoires.</p> <p>Indication de provenance : nom du pays, d'une région naturelle ou parties de régions dont le produit tire sa particularité et sa renommée et où il est produit, transformé ou fabriqué.</p>	Law n° 99-57 on PDOs and geographical indications, 1999
Vietnam	GI: the product having the geographical indication originates from the area, locality, territory or country corresponding to such geographical indication. The product having the geographical indication has reputation, quality or characteristics essentially attributable to the geographical conditions of the area, locality, territory or country corresponding to such geographical indication.	Intellectual Property Law, 2005

9.2. Diversity in available means of protection

Country	Product	Means of protection		
		Sui generis protection (register and code of specification)	Trademarks (including collective, guarantee and certification marks)	Other special protection
Argentina	Wines and spirits	Law on the designation and presentation for wines and spirits in Argentina		
	Agricultural products and foodstuffs (except wines and spirits)	Law on the Geographical Indications and Denominations of Origin for agricultural products and foodstuffs		
Indonesia	All kinds of products	Draft Regulation on Geographical Indications, in the Law on Trademarks		
	All kinds of products	Trademarks law		
Switzerland	Wines	Federal law on wine Cantonal laws on PDOs and GIs		
	Agricultural products and processed agricultural products (except wines)	Federal ordinance on PDOs and PGIs		
	Watches	Ordinance on the Use of the Designation "Swiss" for Watches of 23 December 1971		
	2 cheeses	Ordinance of the DFI (Federal Department of the Interior) on Animal Food Products of 23 November 2005		
	All products	Swiss Register of Trademarks + legal protection as indications of source		

9.3. Institutional frame

Country	Legal tools / kinds of products	Authority for the definition and registration
Argentina	PDOs and GIs / wines	National Institute of Viti-viniculture
	PDOs and PGIs / agricultural products and foodstuffs	Ministry of Agriculture
Cambodia	PDOs / all products	Geographical Indications Office (Intellectual Property Department of the Ministry of Trade)
China	GIs / all products	Administration for Quality Supervision and Quarantine Inspection
Croatia	PDOs and PGIs / all foodstuffs	Ministry of Agriculture
France	PDOs and PGIs / all foodstuffs	National Institute of Appellations of Origin (under the authority of the Ministry of Agriculture)
Germany	PDOs and PGIs / all foodstuffs (except wines and spirits)	Patents and Trademarks Office (under the authority of the Ministry of Justice)
Greece	PDOs and PGIs / all foodstuffs	Ministry of Rural Development and Food
Italy	PDOs and PGIs / all foodstuffs	Ministry of Agriculture
India	PGIs / all products	Controller General of Patents, Designs and Trademarks (under the authority of the Ministry of Trade and Industry)
Lebanon	Appellations of Origin / wines	Consultative Committee under the authority of the Ministry of Agriculture
Mexico	PDOs / all products	Institute of Intellectual Property
Norway	PDOs and PGIs / all foodstuffs	Matmerk (Norwegian Food Branding Foundation, independent organism constituted by 12 associations) and Mattilsynet (Norwegian Food Control Authority)
Poland	PDOs and PGIs / foodstuffs (except wines and spirits)	Patent Office
Switzerland	PDOs and GIs / wines	Federal Ministry of Agriculture Cantonal Ministry of Agriculture Cantonal Authority for the control of foodstuffs
	PDOs and PGIs / foodstuffs (except wines)	Federal Ministry of Agriculture
	Indications of Source / all products	Federal Institute of Intellectual Property
Turkey	PDOs and PGIs / all products	Patent Institute (under the authority of the Ministry of Trade and Industry)
United Kingdom	PDOs and PGIs / all foodstuffs except wines and spirits	Department for Environment, Food and Rural Affairs

9.4. Expertise for public policy on GIs

Country	Legal reference	Expertise
Switzerland	Ordinance on PDOs and PGIs, Art. 22 (wines excepted)	<p>Federal Commission on PDOs and PGIs: constituted by the Federal Department of Economy, the commission advises the Ministry of Agriculture for the application of the PDO-PGI legislation, and the competent authorities regarding the protection of registered denominations. The commission is the main frame of examination and validation for the code of specifications of PDO-PGI applications.</p> <p>The Commission is composed of:</p> <ul style="list-style-type: none"> - lawyers - delegates of farmers associations - delegates of sectorial interprofessions (fruit, milk...) - a delegate of consumers associations - people representing the cantons, the authorities in charge of the control of foodstuffs - people representing the organisms of promotion and extension of GIs - people representing the Ministry of Agriculture and the Commission for the control of wine trade

9.5. Authorisation to use a GI, control issues

Country	Type of control	Institutions, costs, etc.
Switzerland	<p>PDOs and PGIs (wines excepted)</p> <p>Certification EN 45'011</p> <p>Precisions and additional requirements in the Ordinance on the control of PDOs and PGIs</p>	<p>Private certification bodies.</p> <p>The main certification body for PDOs and PGIs (Intercantonal Certification Organism – OIC) is owned by 8 Cantons of West-Switzerland.</p> <p>Certification direct costs are, for example, 0.02 € per kilo for Gruyère PDO (27'000 tons/year) or between 130 and 320 € per producer/year.</p>
	Wines	<p>Federal minimal requirements set up in the Ordinance on Wine</p> <p>Wine-growing (vineyard register, etc.) and grape harvest control: cantonal administration (service of agriculture and authority in charge of the control of foodstuffs); free of charge for the producers.</p> <p>The cantonal regulations on wine PDOs usually provide a mandatory tasting examination on a sample of all the wines for each year.</p> <p>Wine trade (use of appellations, mixes of wines, etc.): either a federal independent commission (CFCV, http://www.ewk-cfcv.ch) or cantonal authorities in charge of the control of foodstuffs; 7 of them have delegated this control to OIC (http://www.oic-izs.ch). The direct cost of this control may vary from 15 (up to 750 liters of year production) to 3'300 € (for a 2 millions liters production) per year, according to the volume of production, the status and the organism of control.</p> <p>CFCV controls all wine traders, cooperatives, big producers, whereas OIC and cantonal authorities control only producers who only trade their own production; the control made by OIC is significantly less expensive than the control made by CFCV.</p>

9.6. Case studies

9.6.1. Melton Mowbray Pork Pie⁴⁴

Northern Foods versus Department of Environment, Food and Rural Affairs (Defra) and Melton Mowbray Pork Pie Association

Melton Mowbray Pork Pie Association (MMPPA) initiated application for protection of product as GI. The case was supported by the Department for Environment, Food and Rural Affairs (Defra). Northern Foods (NF) sought a judicial review and their appeal was heard in the High court on 21st December 2005.

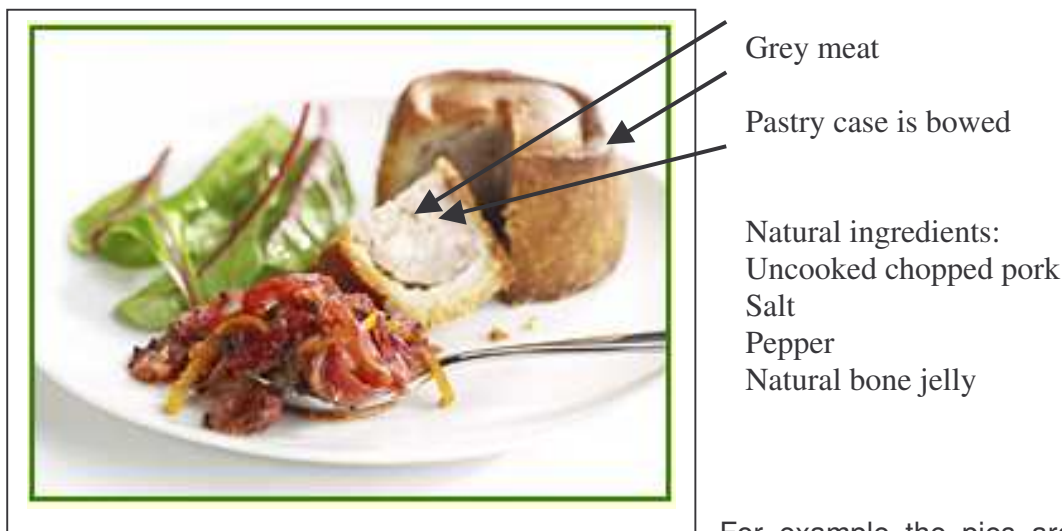
The court found in favour of the application by Defra on behalf of MMPPA.

a) Background

Melton Mowbray is located in the county of Leicestershire. By the middle of the 18th century, Melton Mowbray was located in an area popular for fox hunting. The hunting season coincided with the slaughter of pigs reared on surplus whey from the production of Stilton Cheese within the region. Some of the pork was used in the production of pork pies. The pork pies found popularity, initially with the hunt servants, and later with the hunting fraternity. In the early 19th century pork pies originating in Melton Mowbray were sold in London. Although the early part of the 20th century saw a decline, the trade revived and in 1998 the MMPPA was formed to bring together producers of what they would claim to be the authentic Melton Mowbray pork pie.

Characteristics of Melton Mowbray Pies

The Melton Mowbray pie has distinct qualities that distinguish it from generic pork pies.



For example the pies are prepared using uncooked chopped pork so that the pork is cooked in the pie, not beforehand. The pie is cooked 'free-standing' so that the pastry case adopts a bowed shape when the pie is cooked. The pie uses natural ingredients including salt, pepper, and natural bone jelly.

Northern Foods

Northern foods is a large food producer with an annual turnover of £1.4 billion and employs 23,000 workers in 40 sites in UK and Eire. It specialises in ready meals, sweets, snacks and pastry

⁴⁴ This case is drawn from the SINER-GI WP1 checklist for United Kingdom (Mitchell NESS, Angela TREGGAR)

products and produces 3000 products. Its own brands are Fox's Biscuits and Goodfellas Pizza but a substantial share of its business is in the production of own label brands, including 'Melton Mowbray Pork Pies' for food multiples like M&S, Asda, Tesco, Sainsbury, and Safeway.

Samworth Brothers

Samworth Brothers is a private family business with an annual turnover of £375 mil and employs 5,500 staff. It operates 13 companies between Leicestershire and Cornwall. It produces a range of products including sandwiches, fresh salads, ready meals, savoury pastry, desserts, cooked meats and sausages. Its main brand is Ginsters, but it also owns Dickinson and Morris, traditional bakers of MMPP in Melton Mowbray.

Dickinson and Morris started producing traditional Melton Mowbray pork pies in 1851. In 1996 it launched its products nationally through multiple retailers such as Waitrose, Safeway, Booths, Budgens, and Morrison.

The Market

The pork pie market valued at £130 m per year. Within this broader market the Melton Mowbray Pork Pie sector enjoys the fastest growth and is valued at £50m. The market leader, Samworth Brothers, is based in the region and has a 62% share. Northern Foods currently has a 28% share. Another company, Kerry has a smaller share of 4%.

Basis for Concern

The concerns of the MMPPA are that the 'Melton Mowbray Pork Pie' produced by Northern foods for multiple retailers such as M&S, Asda, Tesco, Sainsbury, and Safeway does not have the distinctive features and qualities of the authentic version.

Comparison of Authentic Melton Mowbray Pork Pie with Rival (Non-authentic) Versions

Melton Mowbray Pork Pie	Rival Non-authentic Versions
Grey meat	Pink meat
Seasoned with salt and pepper	Contains monosodium glutamate
Contains natural bone jelly	Uses artificial additives
Bowed shape	Straight
Made in Melton Mowbray area	Made in Shropshire and Wiltshire
Uses chopped raw pork	Uses minced cured pork

b) The Application

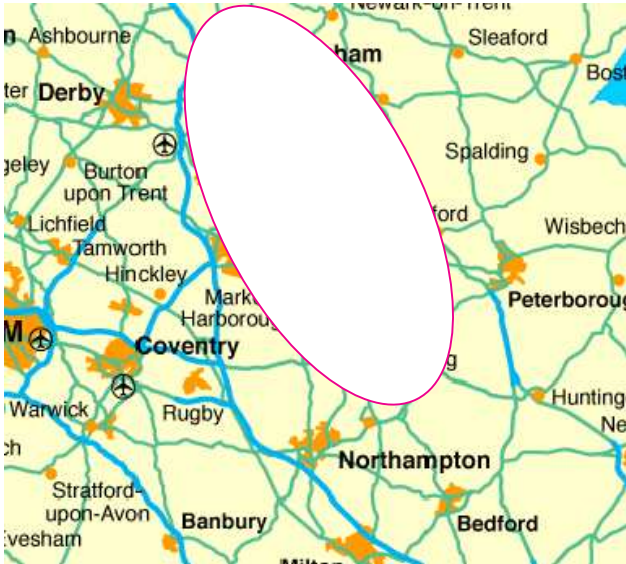
MMPPA became concerned that other producers were producing pork pies with the description 'Melton Mowbray' that were not produced in the area and that did not have the distinctive features and qualities of the authentic version.

MMPPA made an application through Defra in February 2005 to the European Commission for the registration of 'Melton Mowbray Pork Pie' as a protected geographical indication under Council Regulation (EC) 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. The application included a product specification under Article 4 of the Regulation. Defra supported the application and submitted the application to the Commission in May 2005.

However the application was contested by Northern Foods Plc (NF) who requested a judicial review on the basis of the definition of the geographical area defined under the application.

c) Basis of Appeal by Northern foods

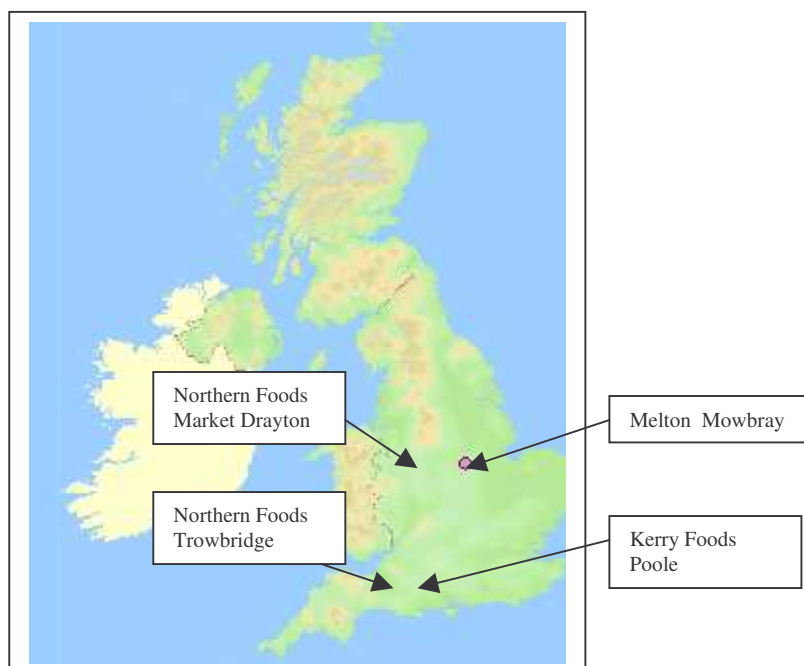
NF's appeal was based upon the definition of the "geographical area" defined in the application. The area is large, covers an area of 1800 sq miles and includes not only Leicestershire, but Nottinghamshire and parts of Northamptonshire and Lincolnshire.



Northern Foods argued that the defined geographical area should refer to the same specific place; hence the geographical area had to be Melton Mowbray, although it conceded that that could include the immediate vicinity of Melton Mowbray. NF suggested that MMPPA could apply for a TSG under a different regulation.

NF argued that in this context of geographical area, Defra should have given careful consideration to this definition before it submitted the application. Thus Defra's part in the application procedure was brought into question.

Behind the present proceedings lay, of course, the commercial interests of NF and the MMPPA. NF produces "Melton Mowbray pork pies", not in the designated area, but in Trowbridge, Wiltshire and in Market Drayton, Shropshire. Another company, Kerry produces pies in Poole, Dorset. The market leader, Samworth is located in the geographical area. Part of NF's argument therefore is that registration of the name and area would hand over monopoly power to Samworth, who controlled 62% of the Melton Mowbray Pork Pie sector.



Location of Melton Mowbray and Rival Producers

d) The Judgement

The judge, Mr Justice Crane first considered NF's appeal against the role of Defra in the application procedure. Citing the regulations governing the application procedure, and previous cases from the European Court, he concluded that 'These comparisons demonstrate not that these registrations are necessarily correct, but that the argument put forward by [NF] is novel and not one that has previously met with agreement by the Commission or any of the Member States. Defra relied on guidance from the Commission that reflects such past practice.' Hence Defra's part in the procedural aspects of the application were vindicated.

The judge then turned to the NF's appeal on the basis of the geographical area. He reviewed and compared the regulations concerning both PDO and PGI. He pointed out that the two are distinct.

The judge distinguished the different interpretations of *geographical origin* and *geographical area*. He concluded that he gained 'some assistance' from Article 4.2(f). He pointed out it requires that the specification includes details bearing out the link with (for a PGI) the geographical origin within the meaning of Article 2(2)(b). Thus he pointed out that if a comparison is made between 4.2(d) and 4.2(f), the foodstuff must originate in the geographical area and have a link with the geographical origin. He concluded the two were two different concepts, and that *geographical area* may involve a wider definition than *geographical origin*.

The judge also cited examples from other registrations. For example, the specified area for Pruneaux d'Agen includes not merely Agen but large parts of the departments of Lot-et-Garonne, Gironde, Dordogne, Lot and Tarn-et-Garonne. Agneau de Pauillac has a specified area that covers the whole of the department of Gironde. Jambon de Bayonne may come from anywhere in Aquitaine, the Midi-Pyrenees and Poitou-Harentes (sic) and several neighbouring departments. And Italy has similar wide areas for Parma ham and Mortadella Bologna. There are other examples and other products the subject of current applications.

The judge also made an observation about the logic of NF's appeal. He pointed out that if NF asserted that Melton Mowbray pork pies should come only from Melton Mowbray, the assertion is perhaps somewhat disingenuous. A registration on that basis would prevent not only most of the

members of the MMPPA from selling their pork pies as "Melton Mowbray"; it would prevent NF from doing so, quite apart from the specification of the contents of the pies.

e) Consequences of Judgement

The judgement was met with predictable responses from the parties involved.

Mr Matthew O'Callaghan, Chairman of MMPPA placed the case in a wider perspective with his observation that, 'This is a test case for the survival of British regional foods' and with the implication that, 'The High Court's decision ...sends a positive signal to regional food producers and may well encourage more applications...to preserve Britain's rich food heritage.'



Matthew O'Callaghan, Chairman, Melton Mowbray Pork Pie Association

NF announced it would appeal against the decision. Carol Williams, the company secretary, said: "This is a case of EU rules being exploited to allow the biggest player in this market to get bigger at the expense of the consumer. "We have been making great Melton Mowbray pork pies for more than 100 years. Our pies are very high quality and made to traditional recipes and our customers think that is more important than where they are made."

f) Wider Implications of the Judgement

Although the case had centred on the definition of geographical area there are wider implications from the original application for protection by MMPPA and the actions of NF.

Authenticity

The MPPA product differs from those produced by the mass-produced versions of its competitors. It is more authentic and uses natural ingredients. This issue was not raised in the case brought by Northern Foods but is one that underlined the concerns of MMPPA in their initial application for PGI status.

Competition

As identified by MR Justice Crane, the commercial interests of the parties are at the heart of the case. MMPPA see the competition by NF as unfair since they regard the 'Melton Mowbray' pies produced by NF as inferior and not authentic.

NF argued that the judgement delivers monopoly power to MMPPA through Samworths, the market leader. However, competition policy in Britain under the Competition Act 1998 and the Enterprise Act 2002 does not view a company's dominance of a market, as indicated by market share, as a case for concern. The initiation of an investigation requires evidence of abuse of that dominance, for example through excessive pricing and profitability. In the context of public policy,

the case would be interesting because it would require a definition of the market. For example the perspective of monopoly control depends on whether the market is defined in the context of Melton Mowbray pork pies, pork pies in general, or the savoury bakery product market, to include other types of pies.

Carol Williams, Company Secretary of NF commented that, "This is a case of the EU rules being exploited to allow the biggest player in this market to get bigger at the expense of the consumer. We think it's anti-competitive and it's a sad day for commonsense," (Financial Times, Thursday December 22, 2005). This comment suggests that the consumer would be exploited by higher priced premium products produced by the market leader. MMPPA would presumably put forward the counter-argument that NF has exploited the consumer with inferior but cheaper mass produced, non-authentic products bearing the description of 'Melton Mowbray Pork Pie'.

NF has also announced its intention to oppose a campaign by Cornish pasty producers to seek the same protection as MMPPA for the Cornish pasty, another savoury bakery product (The Daily Telegraph, **February** 15, 2006).

Awareness

The case has drawn a lot of attention in the news media, which has served to create more awareness amongst the general public and specialist regional food producers.

For example on the issue of NF and MMPPA alone there are at least 9 articles in the British quality national press during 2004-2005, leading up to the court case.

In addition to a discussion of the issues surrounding the case, news media reports have often alluded to general issues concerning protection and have cited examples of protected products within Europe. With the exception of one particular article, the reports have been favourable and identify the benefits of protection.

Other producers and producers associations have announced their intentions to apply for protected status for the same reasons cited by MMPPA; to gain protection in the face of competition from products that are not authentic. For example, Colchester Oysters, Cornish Pasties, and Haggis.

9.6.2. Raclette du Valais⁴⁵

The public consultation related to the application in 1997 for a PDO **Raclette du Valais** (cheese), which includes the reservation of the name "Raclette", has raised 50 oppositions coming from Switzerland but also from other countries, mainly related to that exclusivity on a name which is claimed to be generic by producers outside Valais (a Swiss canton). Even when considering only the Swiss production, only 13% of the cheese sold as "Raclette" is produced in Valais. But the "Raclette" produced out of Valais is generally labelled and advertised with names (including family and dialect names) and images from Valais. In addition, "raclette" is also used for the meal that is the way of consumption of the cheese.

The differences between the two products could be summarized as follows:

Raclette du Valais	Swiss Raclette
Raw milk	Generally pasteurized milk
Round shape	Round or square shape
Small-scale cheese factories	A majority of big centralised cheese industries
High costs of production (mountainous area)	Lower costs of production
Geographical reference of the cheese factory of farm	Commercial names generally usurping the references to Valais

⁴⁵ This case is reported by Erik THÉVENOD-MOTTET

The opponents argue that they should change the name of their products, and that considering that Valais can only supply 13% of the Swiss production of “Raclette”, the exclusivity on the denomination would benefit to imported products. But, even if the denomination is reserved for cheeses originating from Valais, the producers outside of Valais could still use their individual trademarks provided that they do not include the word “Raclette”.

In order to defend their interests, producers outside Valais have registered a guarantee mark “Raclette Suisse”:



The Swiss Ministry of Agriculture (OFAG) has decided to reject all the oppositions to the registration of **Raclette du Valais**, on the basis that the name “Raclette” is not a generic, but a traditional denomination whose origin is Valais, with local references from the 16th century. In conformity with the case law of the Federal Court, the transformation of an indication of source to a generic name requires that the denomination was used at a great scale for decades and that the product which is designated with that denomination was not associated with its original geographical area any longer. A possible genericization process should be considered as finished only when all the interested parties consider the denomination as a common name to designate a product. A consumers survey required by the OFAG has demonstrated that for 43% of the people the name “Raclette” is still an indication of source related to Valais; on that basis, even if the production has largely spread in other parts of Switzerland, the genericization process can not be considered as finished.

The OFAG leaded negotiations between the producers in order to find solutions to preserve the interests of the Swiss cheese sector, without succeeding until now. Opponents have already made a first step appeal before the administrative commission of the Ministry of Economy.

That commission decided, on 27 June 2006, that the OFAG could not protect the name “Raclette” when isolated, arguing on several grounds (<http://www.reko.admin.ch/Files/612003-30p.pdf>, the whole decision document in French).

Now the conflict may have some new developments, all related to the two-fold debate: can the name “Raclette” be exclusively reserved to cheeses from Valais? And is “Raclette” a cheese name or a meal name?