Institutional and Legal Framework for GIs: Needs and Governance

Discussion Points

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

Christoph Spennemann, Legal Expert, IP Team Division on Investment, Technology and Enterprise Development UNCTAD
Basic requirements for GI's domestic legal frameworks (1)

- Domestic laws on GI protection need to reflect
  - A country’s economic policy goals & industry structure
  - A country’s legal traditions & international commitments
  - A country’s institutional framework
Basic requirements for GI’s domestic legal frameworks (2)

• Domestic protection is a prerequisite for any effective international protection
  • Article 24.9, TRIPS Agreement
  • Article 1 (2), Lisbon Agreement
Diversity of domestic legal protection for GIs: different degrees

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

- Permissive system (« Type A »)
- Prescriptive system (« Type D ») or
- Variations in between (« Types B, C »)
- Choice depends on
  - Policy goals & structure of domestic production
  - Legal traditions & international commitments
  - Existing institutional infrastructure
Policy goals & structure of domestic production (1)

- Prescriptive system (sui generis GI, AO)

  where

  - Small scale producers of niche & luxury products
  - GIs as alternatives to mass production
  - GIs as incentives to promote knowledge in traditional production methods, ecological production & sustainable use of biodiversity (UNCTAD BioTrade Facilitation Program for developing countries; www.biotrade.org)
Policy goals & structure of domestic production (2)

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

- GI's protection & promotion through state actors (sui generis/AO systems)
- GI's protection & promotion through private actors (TM systems)
- Commitments under international regimes: GI – TM interface
  - TRIPS Article 16: Prior TMs have general priority over GIs (EC/US WTO Panel; possible exceptions under Article 17)
  - US FTAs: Refusal of GIs if consumer confusion with prior TMs
  - EU FTAs: TRIPS-plus: GI priority over conflicting TMs irrespective of consumer confusion or prior TM use
Existing institutional infrastructure (1)

- For efficient *sui generis* system, legislation alone is not sufficient
- Creation of infrastructure
  - Producers’ associations
  - Administrative & quality control agencies
  - Enforcement authorities controlling misuses
- Know how by producers as to showing link between origin and product characteristics
- Know how & continuous efforts as to marketing
  → Considerable expertise & resources required
Existing institutional infrastructure (2)

• Consequence: no « one-size-fits-all » solutions, but case-by-case examination of local conditions regarding each particular product

• UNCTAD BioTrade Facilitation Program case studies (2005)
  • Maca plant (Peru; nutritive & medical properties): favorable conditions
  • Borojo fruit (Colombia): lack of origin–quality link; lack of expertise & bodies to ensure uniform quality
GIs and market access

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

• Successful marketing of GI products requires elaborate legal & administrative framework, resources, expertise and political commitment

• Domestic legal frameworks should take account of policy priorities, structure of industry and available infrastructure & administration

• UNCTAD-ICTSD Project on IPRs & Sustainable Development: assistance to DC governments & firms in the use of GIs
  • Regional workshops (Africa, Asia, Latin America)
  • Case studies of successful GI marketing
  • Exchange of experiences in GI management (regulatory councils)
Contact

Christoph Spennemann
Legal Expert
Intellectual Property Team
Division on Investment, Technology and Enterprise Development (DITE)
UNCTAD
E-mail: Christoph.Spennemann@unctad.org
Tel: ++41 (0) 22 917 59 99
Fax: ++41 (0) 22 917 01 94
http://www.iprsonline.org