

Bern, August 15, 2006

WTO – Better protection for geographical indications for all products: GI-extension, the solution!

1. What are geographical indications?

A geographical indication is the name of, or term referring to, a particular geographical place. It is used to identify products which have a unique quality or reputation due to their geographical origin.

Geographical indications (GIs) are intellectual property rights. Their function is to identify products on the market, similar to trademarks and trade names. Well-protected and pro-actively used, GIs are a very interesting marketing tool because they can convey a lot of information from the producer to the consumer.

The product categories which are identifiable by GIs are not limited. All countries produce such products.

EXAMPLES OF GEOGRAPHICAL INDICATIONS:

For Beer: “*Budějovické pivo/Budweiser*” (Czech Republic), “*Bayerisches Beer*” (Germany); for carpets: “*Hereke*” (Turkey), “*Bukhara*” (Uzbekistan); for ceramics: “*Arita*” (Japan), “*Talavera*” (Mexico); for cheese: “*Sázavsk*” (Czech Republic), “*Parmigiano-Reggiano*”, “*Gorgonzola*” (Italy), “*L’Etivaz*”, “*Sbrinz*” (Swiss); for cigars: “*Havana*” (Cuba); for coffee: “*Antigua*” (Guatemala), “*Blue Mountain*” (Jamaica), “*Kenya*” (Kenya); for crystal: “*Bohemia*” (Czech Republic); for fish sauce “*Phu Quoc*” (Vietnam); for honey: “*Ulmo*” (Chile); for rice: “*Basmati*” (India and Pakistan); for sparkling wines: “*Champagne*” (France), “*Cava*” (Spain); for tea: “*Long Jin*” (China), “*Kenya*” (Kenya), “*Ceylon*” (Sri Lanka); for watches: “*Geneva*” or “*Swiss*” (Swiss); for wine: “*Bohemia Sekt*” (Czech Republic), “*Chianti*”, “*Montepulciano*” (Italy), “*Fendant*” (Swiss), “*Nappa Valley*” (USA).

2. Why are geographical indications important?

Geographical indications play an important role for producers and consumers alike. In addition, they contribute to sustainable development in many regions.

Geographical indications (GI) give the producers of a region the exclusive right to use the indication for their products originating from that region. It also means that they have the right to prohibit any unauthorized use, usurpation or imitation of the sign on a product that is not from the designated area or which does not have the qualities guaranteed by the GI.

The legal protection of geographical indications also guarantees that consumers are not misled by false claims and allusions.

Rooted in the soil of the region for which they stand, geographical indications contribute to the socio-economic improvement of regions around the world: They create employment, contribute to the regulation of the market and encourage the diversification of production. In addition, they protect natural treasures and maintain the cultural heritage.

Finally, geographical indications contribute to sustainable development. This makes them valuable to producers in both industrial and developing countries when they wish to offer their diverse products, identified by the GIs, on the globalized market.

3. How are geographical indications protected at the international level?

The WTO TRIPS Agreement is currently the primary means for protecting geographical indications at the international level. The Agreement, however, does not guarantee all product categories the same level of protection. An imbalance exists which is unjustified and should be corrected.

Currently there are several international agreements which regulate the protection of geographical indications at the international level¹. The primary instrument, however, is the WTO Agreement on Trade Related Aspects of Intellectual Property (known as the TRIPS Agreement), signed April 15, 1994, because of the number of signatory states (149). Unfortunately, the Agreement limits the most effective protection to wines and spirits. It does not strictly prohibit the use of GIs such as “*Geneva Watch, made in USA*”, “*Gorgonzola type cheese, made in Argentina*” or “*Ceylon Tea made in Malaysia*”. According to the present protection level, it is simply enough to indicate somewhere on the product its true origin in order for such use of a GI said to be not misleading and therefore legitimate. By contrast, the label “*Spanish Tequila*” or “*Chianti-type Red Wine, produced in Algeria*” is forbidden. Thus, producers of rice, coffee, cheese, watches and rugs are clearly discriminated against.

PROTECTION UNDER THE TRIPS AGREEMENT

The weakness of the TRIPS Agreement is that it provides two different levels of protection for geographical indications:

- **general protection** (under Article 22) for all products against the unjustified use of a GI in which the public is misled or an act of unfair competition is involved.
- **additional protection** (under Article 23) for wines and spirits. This protection is much more effective because it prohibits incorrect use of a GI, whether or not the public is misled or an act of unfair competition is involved, and even if the true origin of the product is indicated.

4. Why is the current international protection insufficient?

The general protection for products other than wines and spirits allow geographical indications to be used in such a way that the legitimate user receives no remuneration for the investment made in building up the reputation of the GI, and it misleads consumers in regard to the origin and characteristics of the product.

The TRIPS Agreement allows the misuse of geographical indications, for example, “*Roquefort-type cheese made in Australia*” or “*American Basmati rice*”, on all products except for wines and spirits. This hurts producers as much as it hurts consumers:

- **Producers** receive no remuneration for their investment in developing and marketing their products. They lose market share and can even be forced to lower prices to compete. In addition, the reputation of the original product is damaged.

¹ Paris Convention for the Protection of Industrial Property (1883); Madrid Convention for the False or Deceptive Indications of Source on Goods (MMA) 1891; Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration (1958).

- **Consumers** are misled because they are led to believe that they are buying an authentic product with certain qualities and clear characteristics, whereas, in fact, it is an inferior imitation from some other corner of the world.

5. How can the insufficient protection be improved?

The protection of geographical indications at the international level could be improved by extending the protection currently guaranteed only to wines and spirits to all other products at the next round of WTO negotiations. Creating a multilateral register for all product categories would also help.

The extension of protection would correct the imbalance existing presently in the TRIPS Agreement, would treat the producers in all product categories on an equal footing and would guarantee them efficient protection.

- **Producers** of beer, coffee, rice, carpets and cheese would be able to enjoy an efficient protection for their geographical indications. They would be able to quickly and effectively fight unauthorized use of indications, e.g., *"Blue Mountain coffee, from Argentina"* or *"Parma ham, from New Zealand"*. They would be able to develop new markets more easily and their investments in developing and marketing their GI products would be financially more profitable.
- **Consumers** would be protected better. They would no longer be misled to think they were buying an authentic product of a certain quality and with certain characteristics when in fact it was an imitation.
- Effective protection of geographical indications also has a positive effect on the **sustainable development of certain regions**. This includes sustaining a population living in a decentralized or disadvantaged area; preservation of the countryside; maintaining the biodiversity; encouraging diversification in production and traditional production methods as well as the development of parallel economic activities (e.g., tourism). These are all issues which are of great importance in many developing countries and in many industrialised country as well.

Creating a multilateral register would provide a strong and useful tool for the practical defence of geographical indications.

An international register would make it possible for all WTO Members to recognize protected geographical indications. In addition, the registration of a geographical indication would facilitate the opposition proceedings for the injured party against the unauthorized use of a GI.

6. What is the role of the GI-Friends in the Doha negotiations?

The GI-Friends, more than 50 WTO Members, including many developing countries and European countries, are convinced that improved protection for geographical indications at the international level will have a positive effect for producers and manufacturers in developing and developed countries alike. Thus, they are actively engaged in working together for improved protection in the WTO negotiations of the Doha Round.

Typical products such as cheese, beer, coffee, watches communicate an image of quality and know-how worldwide. These products are globally known and appreciated. In order to provide improved protection at the international level and to really benefit from the positive effects of improved protection for geographical indications, GI-Friends, more than 30 other WTO Member States, have

been actively working for the extension of protection for geographical indications. These states include developed countries (such as EU Members, Bulgaria, Switzerland and Turkey) and many developing countries (such as Guinea, India, Jamaica, Kenya, Madagascar, Sri Lanka and Thailand).

The big agricultural products exporters such as the USA, Australia, Canada, Argentina and Chile are fierce opposed to this effort.

The issue of improved protection for geographical indications at the international level is not a North-South issue.

There is no logical, legal, economic or trade-related reason to protect only GIs of wines and spirits effectively and to leave the rest of the world's products with a second-class protection. Improved protection by extending protection to all product categories and the creation of an extensive register would have positive effects on trade and investment, especially for export-dependent developing and industrial countries. Every country produces products with specific qualities and characteristics which are due to their geographical origin. The GI-Friends and among them Switzerland are thus convinced that better protection for geographical indications for all products would be an important step for all WTO Member States.

GI-Friends are working towards having all WTO Member States recognizing and using the opportunity offered by the Doha Round to bring new balance into the TRIPS Agreement with regard to the protection of geographical indications. Thus, this issue needs to be included in the final results of the Doha Round.

More information in English: <http://www.ige.ch/E/jurinfo/j110110.shtm>

Contact: Felix Addor
Deputy Director General
Federal Institute of Intellectual Property
Tel. +41/ 031/322 48 02
e-mail : felix.addor@ipi.ch

Alexandra Grazioli
Legal Advisor
Federal Institute of Intellectual Property
Tel. +41/ 031/322 48 02
e-mail : alexandra.grazioli@ipi.ch