

Trade related intellectual property rights: geographical indications

SUMMARY

- ▶ *The TRIPS Agreement states that falsifying the origin of a good is an act of unfair competition but many developing countries have difficulties legislating for this type of protection.*
- ▶ *WTO members aim to extend this level of protection by creating a multilateral register using a database with obligations to protect the names on the register.*
- ▶ *Securing the intellectual property rights in genetic resources for developing countries is a key issue in the WTO trade negotiations.*

For the purposes of the Trade Related Intellectual Property Rights (TRIPS) Agreement, geographical indications (GI) identify a good from a country, region or locality, where a particular quality, reputation or other characteristic is attributable to its geographical origin.

Legal framework

Article 22 of the TRIPS Agreement provides, inter alia, that in respect of GI, WTO Members shall prevent the use of any means that indicate or suggest a good originates in an area other than the true place of origin. Such an inappropriate use constitutes an “act of unfair competition”.¹ A Member “shall [...] refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated”, in particular if such use misleads the consumer. The TRIPS Agreement also provides higher protection for GIs relating to wines and spirits (Article 23).

Implementation

Many developing countries encounter legislative difficulties implementing these principles and insisted on extending this level of protection to a wide range of other products, including food and handicrafts. It should be noted that the Agreement allows exceptions such as when a name has become a common (or “generic”) term. Members have used various legal means to protect GIs such as specific laws, trademark laws and consumer protection laws.

Negotiations

In line with Article 23.4,² some Members are in favour of the creation of a multilateral system for notifying and registering GIs for wines. As provided for in Article 24.1, these Members entered into negotiations aimed at increasing the protection of the individual GI. In turn, the Council for TRIPS will keep under review the application of those Articles. The establishment of a multilateral register and the possible extension of the higher level of protection are the main issues under discussion.

ESTABLISHING A MULTILATERAL REGISTER ■

Many proposals for a voluntary participation system to notify and register GI for wines and spirits have been submitted to the TRIPS Council:

- Some Members would prefer a system built as a database to report GIs granted protection under national legislation. Others will take such information into consideration when granting their own protection.
- Another group of proposals includes obligations, subject to certain conditions, for Members to protect the names listed in the register.

EXTENDING “HIGHER LEVEL” PROTECTION TO OTHER PRODUCTS ■

Certain countries have proposed extending higher protection beyond wines and spirits to other products, such as handicrafts, agricultural products and other beverages. In preparing the Doha Ministerial Declaration, the discussions have considered whether there should be negotiations on this subject at all, or whether further study is needed before deciding to negotiate.

¹ Within the meaning of Article 10 bis of the Paris Convention (1967).

² Article 23.4 provides, that “In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken...concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection.”

Members also discussed whether negotiations would be for all or only some products, and if this should be decided in advance. One proposal describes protection for GIs as a market access issue for agricultural products as GIs improve product differentiation, an important feature of competition. Consumers would benefit because they are offered more product quality choices and information. Producers also benefit by developing quality products free from unfair or misleading competition in markets that import them.

Capacity-building needs

Securing intellectual property rights in genetic resources has been identified as a key issue for the WTO trade negotiations. Related issues are addressed in the International Treaty on Plant Genetic Resources for Food and Agriculture (adopted by the FAO Conference in 2001), a binding international instrument whose provisions directly relate to the intellectual property rights (IPRs) issues, such as recognition of farmers' rights, and the establishment of a multilateral system of access and benefit-sharing.

Proposed action

Countries' negotiation skills should be strengthened on the above issues. In addition, legislators will benefit from independent advice when elaborating the required legislative instruments, both at national and regional levels.

To that effect, the FAO Legal Office could conduct training on the following items which are of specific relevance:

- ▶ Assessing the ethical implications of granting IPRs on a specific GI;
- ▶ Reviewing legislative requirements and their implications when granting such rights;
- ▶ Assessing the various ways for protecting the innovations of indigenous and local farming communities in developing countries;
- ▶ Assessing the potential ways to prevent anti-competitive rights or practices that threaten the food sovereignty of people in developing countries.

In order to satisfy the above capacity-building needs, assistance could be deployed by the FAO Legal Office with the aim to increase countries' capacities to devise appropriate legislative instruments to enforce regulations and standards and to formulate or revise national legislation related to GI and other related matters.

The target audience should be legislation policy specialists, trade specialists and other technical staff involved in the implementation of SPS/TBT and TRIPs and qualified NGO/CSO representatives.

KEY CHALLENGES

- ▶ *To establish a multilateral register of GIs with the possible extension of greater protection to a wider range of products, including food;*
- ▶ *To provide independent advice to developing country negotiators on the most appropriate legislative instruments;*
- ▶ *To propose protection for GIs at the WTO trade negotiations as a market issue for agricultural products.*

